Supreme Court, U. S.
FILED
OCT 30 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-639

LOUIS A. GENTILE, ET ALS., APPELLANTS

V.

PAUL B. ALTERMATT, ET ALS., APPELLEES

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF CONNECTICUT

JURISDICTIONAL STATEMENT

HAROLD J. GERAGOSIAN
380 WEST MAIN STREET
NEW BRITAIN, CONNECTICUT 06052

Counsel for Appellants

October 30, 1975

INDEX

	Page
Opinion below	1
Jurisdiction	2
Questions Presented	2
Statutory provisions involved	2
Statement of the case	4
The Questions are substantial	6
Conclusion	17
Appendix	1A
A. Opinion and Judgment of the State Supreme Court	1A
B. The Connecticut Constitution and statutes involved	43A
C. Notice of Appeal	51A

CITATIONS

Cases:

Bank of Columbia v. Okely, 17 U.S. (4 Wheat.) 235	15
California v. Beyers, 402 U.S. 424	16
Frost v. Railroad Comm., 271 U.S. 583	7
Goldblatt v. Hempstead, 369 U.S. 590	12
Ives v. South Buffalo R. Co., 201 N.Y. 271	10
Lasky v. State Farm Insurance Co., 296 S 2d 9 Fla.	7
Manzanares v. Bell, 214 Kan. 589	10
Mountain Timber Co. v. Washington, 243 U.S. 219	12
New York Central R. Co. v. White, 243 U.S. 188	10,12
Powers v. Hotel Bond Co., 89 Conn. 143; supra, 147	8
Shalley v. Danbury, 64 Conn. 381	7
Shelton v. Tucker, 364 U.S. 479	12
Stanley v. Illinois, 405 U.S. 645	15
Swanson v. Boschen, 143 Conn. 159	14
Welch v. Arthur A. Fogarty, Inc., 157 Conn. 538	9

Miscellaneous:

The Constitutionality of Basic Protection, Ruben and Williams, 1 Conn. L. Rev. 44	9,11

IN THE

SUPREME COURT OF THE UNITED STATES

NO._____

LOUIS A. GENTILE, ET ALS., APPELLANTS

V.

PAUL B. ALTERMATT, ET ALS., APPELLEES

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of the State of Connecticut entered on August 4, 1975 denying an injunction and other relief, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Connecticut Supreme Court, not yet reported, appears in Appendix A hereto. No opinion was rendered by the Court of Common Pleas since the questions were reserved to the state Supreme Court.

JURISDICTION

This suit was brought to enjoin the enforcement of a state statute providing for no-fault automobile insurance as being unconstitutional. Additionally, said action was also brought pursuant to Section 38-351a of the state statutes which authorized any Connecticut resident to bring a declaratory judgment action to determine the constitutionality of the no-fault act. The judgment of the Connecticut Supreme Court was entered on August 5, 1975, and notice of appeal was filed in that court on September 26, 1975. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1257 (2).

STATUTORY PROVISIONS INVOLVED

Sections 38-323, 38-327, 14-108, 14-112(a), 14-116 of the Connecticut General Statutes, as amended, are set forth in Appendix B hereto.

QUESTIONS PRESENTED

1. Does Section 38-323, by eliminating certain fundamental rights of redress for injury in court for 87% of the private passenger motor vehicle accident victims, violate the equal protection and due process guarantees of the 14th Amendment?

2. Does Section 38-323, by distinguishing between and providing different legal rights and remedies for victims of private passenger motor vehicle accidents as opposed to victims of all other tortious acts, violate the equal protection and due process guarantees of the 14th Amendment?

3. Does Section 38-323, by eliminating the right to a trial by jury for 87% of the private passenger motor vehicle accident victims as opposed to victims of all other tortious acts, violate the equal protection and due process guarantees of the 14th Amendment?

4. Does Section 38-323, by substituting a purchased, compulsory, private insurance alternative for long-standing, prior legal rights and remedies guaranteed by the Connecticut Constitution, violate the due process and equal protection guarantees of the 14th Amendment?

5. Does Section 38-327 (a), by making it mandatory for motor vehicle owners to buy insurance from private insurance companies which retain the absolute right not to sell such insurance to anybody, and which insurance is sold pursuant to unregulated and arbitrary underwriting standards, violate the due process and equal protection guarantees of the 14th Amendment;

6. Does Section 38-327 (d), by imposing criminal and administrative penalties and sanctions only on private passenger motor vehicle owners for failing to provide security in accordance with the act, violate the equal protection and due process guarantees of the 14th Amendment?

7. Does Section 38-327 (e), by imposing personal liability up to $5,000.00 for basic reparations benefits regardless of fault for those private passenger motor vehicle owners failing to have the mandatory insurance, violate the equal protection and due process guarantees of the 14th Amendment?

8. Does Section 14-112, by requiring proof of insurance, when read in conjunction with Section 38-327 (d), which imposes criminal sanctions only on private passenger motor vehicle owners for failure to provide insurance, when read in conjunction with Sections 14-108 and 14-116 whereby motor vehicle operators must file accident reports containing information concerning insurance, violate the due process and equal protection

guarantees of the 14th Amendment, and the self-incrimination privileges of the 5th Amendment?

STATEMENT

The appellants brought this declaratory judgment action for a declaration that the "no-fault" motor vehicle insurance law (1972 Public Act No. 273, now codified as Connecticut General Statutes Chapter 690, Sections 38-319 through 38-351a) was unconstitutional, and for an injunction restraining various state officials from engaging in any acts of administration or enforcement of the act. The appellants are Connecticut residents, taxpayers and private passenger motor vehicle owners. The appellants Rosemary Boyajian, Katherine Pagonis and Stilianos Karidas sustained personal injuries of a kind and nature that under the provisions of the no-fault law, they can no longer maintain an action at law for bodily injuries as they would have had the right to do before the passage of the act. The appellant William LeFort had purchased insurance prior to the effective date of the act for an annual premium of $109 but when his policy was subsequently cancelled, he was obliged to buy insurance to comply with the law from the assigned risk plan for a yearly premium of $180. The individual appellee-defendants are various state officials including the insurance commissioner, treasurer, comptroller and finance commissioner. The eight corporate appellees write about one-third of the private passenger motor vehicle insurance in Connecticut, issuing in 1971 about 487,000 such policies with a written premium in excess of $90,000,000.00.

Section 38-323, the heart of the act, prohibits private passenger motor vehicle accident victims sustaining injuries from bringing actions for bodily injuries unless resulting in death, permanent injury, bone fracture,

permanent significant disfigurement, loss of any bodily function, or where the medical expenses exceed a threshold of $400.00. The act abolishes the victim's right to recover general damages under the tort system in 87% of the cases involving automobile accidents. The act applies only to private passenger motor vehicles, with about 1,500,000 such cars registered in Connecticut. There are approximately 350,000 commercial and other registrations to which the law does not apply; nor does the act apply to victims of any other type of tort. In place of the tort system, the act obliges the party to insure himself at his own expense, requiring first-party accident insurance coverage for medical and wage loss (the latter limited to a maximum of 85% of wages with a weekly ceiling of $200.).

A negligence action was one recognized at common law and is thus protected by the "right of redress" state constitutional provision.

The act makes auto insurance mandatory with severe criminal, civil, and administrative penalties for owners failing to buy insurance. Criminally, he is subject to a maximum fine of $500, 90 days in jail, or both. Civilly, he is personally liable for payment of basic reparations benefits up to $5,000 to each person even if he is wholly innocent and blameless. Statutes dealing with reporting motor vehicle accidents (Sections 14-108 and 14-116) require disclosure of the existence or non-existence of insurance, while Section 38-327 (d) makes it a crime for the owner to operate the car on the highway.

The act requires private passenger motor vehicle owners to purchase insurance from private insurance companies which retain the absolute right not to sell such insurance to any given applicant. The insurance is sold pursuant to unregulated underwriting standards which decline to insure numerous categories of persons.

Those unable to buy insurance on the open market must then go into the assigned risk plan at substantially higher premiums and with only limited coverage.

HOW THE FEDERAL QUESTIONS WERE PRESENTED

The federal questions were presented initially in the original complaint that was prepared and served on all the parties. They were thereafter preserved throughout the proceedings from the Court of Common Pleas (where they were incorporated in a Reservation to the Connecticut Supreme Court, dated July 12, 1974) on through to the state supreme court where the issues were both briefed and argued on April 9, 1975. The federal issues pervade the record and briefs of the parties, as well as the opinion of the court set forth in Appendix A.

THE QUESTIONS ARE SUBSTANTIAL

Several states have enacted so-called "no-fault" automobile accident statutes and the record of this type of legislation has been that a number of important and fundamental constitutional issues have been encountered with varying approaches and results. There has also been congressional discussion concerning pre-emptive federal legislation. The questions presented are so substantial that they deserve plenary consideration on the merits.

A. THE THRESHOLD PROVISION OF SECTION 38-323 DENIES THE RIGHT OF REDRESS FOR INJURIES TO 87% OF THE PRIVATE PASSENGER MOTOR VEHICLE ACCIDENT VICTIMS IN VIOLATION OF THE EQUAL PROTECTION AND DUE PROCESS GUARANTEES OF THE 14th AMENDMENT

The sweep of the statute is not a minor intrusion into the tort system since its $400 medical threshold elimi-

nates an estimated 87% of the automobile accident cases, and promises of future escalated thresholds would render this tort remedy virtually extinct. The right to maintain an action at common law for negligence is constitutionally protected by the state in Article I. Section 10, since it is provided that "all courts shall be open, and every person, for an injury done to him in his person, property or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay." It is manifest that a "denial or unreasonable adridgement of the right to obtain redress for an injury occasioned by a neglect" violates this right. *Shalley v. Danbury,* 64 Conn. 381, 387. The legislature is simply precluded from eliminating certain fundamental rights of redress for injury and among them are the tort remedies. If it could eliminate the redress of particular injuries or access to the courts for such purpose there would be no limit to the extent of the power to legislate away particular causes of actions and remedies. *Lasky v. State Farm Insurance Co.,* 296 S 2d 9, 27, Fla (1974) (dissenting opinion).

The state may have the power to grant a privilege on such conditions it sees fit to impose. "But the power of the state in that respect is not unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor it may, in like manner, compel a surrender of all." *Frost v. Railroad Comm.,* 271 U.S. 583, 593, 594. This is particularly so when a less drastic approach is available.

Conceptually the right of redress is so fundamental that only a few cases come close to considering the issue, including the workmen's compensation cases. Defendants claim that the act passes constitutional muster with

a claimed analogy to workmen's compensation laws, and that the legislature has authority to abrogate common law remedies by substituting an adequate remedy.

Our workmen's compensation law is founded upon the theory of an employment contract existing between workman and employer, an implied consideration of which is provision for compensation for injury to the workman arising in the course of his employment. The act accepts, as an inevitable condition of industry, the happening of accidents and charges their costs to the industry by imposing on it a share of the loss. *Powers v. Hotel Bond Co.*, 89 Conn. 143, 145, 146. The costs of injuries incidental to modern industry are treated as part of the cost of production. Furthermore, the act is "elective rather than compulsory in form, in order to avoid a claim of its unconstitutionality; in fact, it induces its acceptance by depriving an employer . . . who refuses its terms, of the three common-law defenses: contributory negligence, assumption of risk and fellow-servant . . . Neither employer nor workman, unless he so choose, comes within the Act. When both so elect, the Act becomes a part of the contract of employment." *Powers v. Hotel Bond Co.*, supra, 147. Sec. 31-275, Conn. Gen. Stats., Rev. of 1958. Also, the employer and employee still retain the full option at any time to withdraw acceptance and become released from the provisions of the compensation laws Sec. 31-275.

With the coming of the Industrial Revolution critical changes were taking place including an increased frequency of industrial accidents, the worker's unrelieved dependence on his wages and his inability to provide for income maintenance if disabled. "Yet injured workers were typically unable to obtain compensation for their injuries. Dismissal and blacklisting were powerful

deterrents to bringing an employer into court. Even if a workman . . . did institute suit, the fellow-servant rule and the doctrines of contributory negligence and assumption of risk made the prospect of recovery exceedingly remote." *The Constitutionality of Basic Protection*, Ruben and Williams, 1 Conn. L. Rev. 44, 52. Thus, in a real sense, the law did not modify the tort remedy because for all practical purposes the employee had none. Obviously, the employment agreement involved a needful, continuing and close relationship, a quid pro quo, that brought the employer and employee together, very different from the isolated and casual automobile collision among strangers.

The workmen's remedial rights at common law were more illusory than real.

The court clearly realized the practical obstacles employees faced before the compensation laws, and the history of labor relations shows losses became a public burden, rather than a burden incidental to the cost of manufacturing goods. The compensation law "has given effect to a revolutionary change in public policy by imposing on the employer his share of a common loss in a common industry, which the state is interested in seeing that he shall bear lest the injured employee become a public charge." *Welch v. Arthur A. Fogarty, Inc.*, 157 Conn. 538, 545, 546.

In the case of automobile reparations, there is a total absence of these overriding considerations. The enormity of the difference is most apparently felt when one realizes the workmen's compensation law conferred beneficial rights to meet the needs of an overwhelming social and economic void; such a void does not exist in the automobile reparations system, as will be more fully discussed below.

Under the no-fault law one is required to buy his own car insurance. "The owner of an automobile is not given

anything! He is required *to pay out of his own pocket* (sic) the cost of first party insurance to provide benefits to him in the event of personal injury arising from an automobile accident. What has he received by way of a *quid pro quo* in exchange for the elimination of his right to resort to the courts to recover for his pain and suffering and other nonpecuniary losses? He has received nothing from anyone. He has simply been forced to give up a valuable right and remedy and in lieu therefor has been compelled to purchase at his own expense first party insurance coverage." (Concurring and dissenting opinion of Justice Prager) *Manzanares v. Bell,* 214 Kan. 589, 522 P. 2d 1291, 1320, 1321.

The defendants cite *New York Central R. Co. v. White,* 243 U.S. 188, as authority sanctioning the constitutionality of the compensation laws. But in that case a constitutional amendment was adopted by New York, prior to *White,* expressly providing that nothing in the state constitution was to be construed as limiting the legislative power to enact laws for the protection of employees, including payment for their injuries. It specifically allowed the legislature the latitude to enact a law based on liability without fault, with or without a jury, and it stated that the statute could provide an exclusive right for the injuries sustained and serve as the exclusive remedy, and that the benefits thereunder not exceed a fixed sum.

This constitutional amendment was in force at the time of the *White* case, and it came about after an earlier workmen's compensation statute was held unconstitutional in the case of *Ives v. South Buffalo R. Co.,* 201 N.Y. 271. *New York Central R. Co. v. White,* 243 U.S. 188. The setting of the *White* case considered "the vast industrial organization" of the state with its "hundreds of thousands of plants and millions of wage

earners," and that the losses from employees' injuries arose out of the business and are expenses of the business operation as any other expense. The court found it important to note also that the New York act applied only to disabling or fatal injuries received in the course of hazardous employment, that is, it was designed to handle the larger and more serious claims which caused the economic problems to the employee.

"Certainly judicial approval of Workmen's Compensation laws was motivated by an awareness of the urgent necessity to redress an intolerable condition which had become a national disgrace. It is doubtful whether the circumstances which obtain today in procedures for compensating automobile accident victims offer any such compelling reason to indulge in a fiction to save the Basic Protection Plan.

"Most Americans today do enjoy some measure of first-party protection against automobile injuries regardless of fault. Well over eighty percent of our population are covered by health insurance. Families are protected by roughly eight hundred billion dollars worth of life insurance. Social Security coverage is extensive, and wage continuation plans are provided by many employers. A whole class of attorneys has developed which devotes its time exclusively to automobile negligence claims, usually on a contingency basis so that even the poorest claimant may have his day in court. Verdicts are growing more generous. Court congestion is being eased notably in Connecticut, and the adoption of prepayment procedures by an increasing number of insurance companies reduces the problem of delayed compensation. Finally, there is evidence that the existence of the fault system has a deterrent effect upon careless driving." *The Constitutionality of Basic Protection,* Ruben and Williams, 1 Conn. L. Rev. 54.

Even if we assume, arguendo, that the legislature may abolish common law rights it must provide adequate and reasonable substitutes for such rights. *New York Central R. Co. v. White*, 243 U.S., 188, 201 *Mountain Timber Co. v. Washington*, 243 U.S. 219, 240, 241. The constitutional validity of legislative abridgement of traditional legal rights depends upon the reasonableness of the means employed to accomplish the legislative objective, the extent of the evil to be overcome and the availability of less drastic measures. *Goldblatt v. Hempstead*, 369 U.S. 590, 595; *Shelton v. Tucker*, 364 U.S. 479.

The no-fault insurance system obliges each party to insure himself at his own expense, mainly for out-of-pocket medical and a limited wage loss. It is nothing new and is in fact only auto medical payments plus a limited income protection (which most people in Connecticut already had prior to the act). In exchange it abolishes the innocent victim's right to recover general damages under the tort system in 87% of the cases. Among the stated purposes of the law were to provide prompt payments, alleviate court congestion and save in the cost of insurance. These evils did not exist in Connecticut. Much less drastic alternatives were available. In the light of the *Goldblatt* test the abolition of the traditional legal rights is unconstitutional.

B. THE ACT DISTINGUISHES BETWEEN AND PROVIDES DIFFERENT LEGAL RIGHTS AND REMEDIES FOR CERTAIN PRIVATE PASSENGER MOTOR VEHICLE ACCIDENT VICTIMS AS OPPOSED TO VICTIMS OF ALL OTHER TORTIOUS ACTS, IN VIOLATION OF THE EQUAL PROTECTION GUARANTEES OF THE 14th AMENDMENT

Section 38-323 classified victims of private passenger

motor vehicle accidents as different from victims of all other tortious acts, including victims of negligent commercial vehicles. If one is involved in an accident with any of the 1,500,000 private automobiles in Connecticut, he is bound by the law, but if one happens to get hit by any of some 350,000 other types of vehicles registered in the state (let alone all of the out of state trucks), then the no-fault act is inapplicable and the tort remedy remains intact.

The classifications must be based on natural and substantial differences, germane to the subject and purpose of the legislation, between those classes included and those left untouched. The fortuity of identity demonstrates the unreasonable distinctions imposed upon the classes which have no natural, legal or substantial differences. If the victim has been injured by the negligent operation of a truck, taxi cab, bus, motorcycle, or by the negligence of any other person or entity other than a private passenger automobile owner, he may pursue his traditional remedies. The following chart outlines the classifications:

Tort Victims

I. Non Private Passenger Motor Vehicle Victims – No Abridgement of Rights

II. Private Passenger Motor Vehicle Victims

A) Fortuity of Injury
   1. 38-323A injury – no abridgement of rights
   2. Non 38-323A injury – abolition of rights

B) Fortuity of Treatment for Non 38-323A injuries
   1. $400.00 or more – no abridgement of rights
   2. Less than $400.00 – abolition of rights

Many other fortuities control, such as the amount of

treatment with reference to the threshold, the state-wide disparity of medical and hospital costs and the like. Conceivably victims of the same tortious act with similar injuries could receive different treatment under the law.

Three other significant types of treatment are accorded owners of private cars (some 1,500,000) and those who own some 23% (354,000) of the other vehicles. First, there is a criminal penalty of a maximum $500 fine and 90 days in jail for failure to carry private auto insurance. This does not apply to the 354,000 other vehicles registered in the state. Second, a private auto owner who fails to carry the required insurance becomes liable personally, even if wholly innocent and blameless, for up to $5,000 in basic reparations benefits to each person. Third, different administrative treatment and penalties are imposed by the motor vehicle department to the two classes of vehicle owners, as well as an exposure to the 5th Amendment problems for a private passenger owner in preparing a required accident report form.

There is still another gross inequality since Section 38-323 applies only to insured cars. If the car is uninsured (and there are some 150,000 such cars in Connecticut alone) then the victim's tort remedy remains unimpaired. This inequity thus depends solely on the fortuity of whether the car is insured or uninsured.

The right to a jury trial is guaranteed by the state constitution wherever that right existed when the Constitution of 1818 was adopted. *Swanson v. Boschen,* 143 Conn. 159, 162. Yet this precious right now depends upon the fortuities referred to above. It is not enough to claim that the right is preserved when the court house door is shut to an entire class of persons. This is analogous to saying one still has the right to vote, but no

elections are to be held. There is no reasonable basis for any of the differing treatments accorded the classes.

C. BY REQUIRING PRIVATE CAR OWNERS TO BUY INSURANCE FROM PRIVATE INSURANCE COMPANIES WHICH RETAIN THE ABSOLUTE RIGHT NOT TO SELL SUCH INSURANCE, AND WHICH INSURANCE IS SOLD PURSUANT TO UNREGULATED UNDERWRITING STANDARDS, VIOLATES THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT

Section 38-327 requires every car registrant to buy insurance, yet no law requires any insurance company to sell it. This obvious anomaly is heightened by an examination of the underwriting guidelines used by the companies which consist of a hodgepodge of vague, arbitrary and discriminatory standards applied subjectively by agents and underwriters responding solely to economic and marketing stimuli with no regard to the rights of their applicants. An examination of the guides is alarming. Furthermore, rejection requires the applicant to buy insurance at much higher premiums from an assigned risk plan, available only in modest coverages.

Constitutional principles of due process and equal protection "recognize higher values than speed and efficiency." *Stanley v. Illinois,* 405 U.S. 645. Due process is intended to secure the individual from the arbitrary exercise of governmental power, unrestrained by the established principles of right and justice. *Bank of Columbia v. Okely,* 17 U.S. (Wheat.) 235, 244. The companies' standards are arbitrary in their selectivity and unfair in their application and thus violate both the due process and equal protection clauses.

D. SECTION 38-327 (d) VIOLATES THE FIFTH AMENDMENT BY REQUIRING AN UNINSURED DRIVER TO INCRIMINATE HIMSELF IN AN ACCIDENT REPORT

The act requires the owner of any private car operated in Connecticut to carry insurance, and penalties are triggered by mere operation. On one hand, Sections 14-108 and 14-116 require in its accident report form the potential accused's written statement as to whether or not he has insurance and, on the other hand, imposes a maximum 90 days in jail and $500 fine if he does not have insurance. There is a $50 fine if he fails to file his report. In the light of the above statutes, the compelled disclosures would themselves confront the person with "substantial hazards of self-incrimination." *California v. Beyers*, 402 U.S. 424, 429. There are about 150,000 uninsured car owners in the state and as such they comprise a rather large group inherently suspect of illegal activity.

CONCLUSION

It is submitted that the decision of the Connecticut Supreme Court fails to recognize the unconstitutionality of the statute by its opinion and judgment on the reserved questions. When legislation takes away a right of redress of the people, and takes away from the separate magistracy of the judiciary a whole class of cases which can no longer be heard, this is indeed drastic and dangerous law which bears closer scrutiny. We believe that the fundamental questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

HAROLD J. GERAGOSIAN
Counsel for Appellants
380 West Main Street
New Britain, Connecticut 06052

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. _____

LOUIS A. GENTILE, ET ALS., APPELLANTS

V.

PAUL B. ALTERMATT, ET ALS., APPELLEES

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF CONNECTICUT

APPENDIX

CONNECTICUT REPORTS

SUPREME COURT

April Term, 1975

LOUIS A. GENTILE ET AL. *v.* PAUL B. ALTERMATT [THOMAS C. WHITE, SUBSTITUTED DEFENDANT] ET AL.

Action for a declaratory judgment determining the constitutionality of an act concerning no–fault automobile insurance, for an injunction, and for other relief, brought to the Court of Common Pleas in Hartford County and reserved by the court, *Missal, J.*, for the advice of this court.

Harold J. Geragosian, with whom were *Timothy Sheehan* and *Mitchell Gardner,* for the plaintiffs.

Barney Lapp, assistant attorney general, with whom, on the brief, was *Carl R. Ajello,* attorney general, for the named defendant et al.

Ralph G. Elliot, with whom was *William H. Champlin III,* for the defendants Aetna Casualty and Surety Company et al.

MACDONALD, J. This declaratory judgment action was brought by the plaintiffs seeking a declaration that 1972 Public Acts, No. 273, now codified in chapter 690 of the General Statutes as §§ 38-319 through 38-351a and subsequently amended, is

uncon. titutional. The plaintiffs are Connecticut residents, taxpayers and private passenger motor vehicle owners required by the act to maintain security on their vehicles, three of whom, Rosemary Boyajian, Stilianos Karidas and Katherine Pagonis, sustained, in private passenger motor vehicle accidents subsequent to the effective date of the act, injuries which did not result in death, permanent injury, fracture of any bone, permanent significant disfigurement, permanent loss of any bodily function, or allowable expense, as that term is defined by the act, in excess of $400.

The defendant state officials are the insurance commissioner, the treasurer, the comptroller and the commissioner of finance and control. The intervening defendants are eight domestic and foreign insurance companies which write automobile liability insurance on private passenger motor vehicles in the state of Connecticut. All of the defendant insurance companies are also members of the Connecticut automobile insurance plan, an assigned risk plan maintained by authority of law.

Notice of the pendency of this action was given pursuant to an order of notice dated January 11, 1973. The second amended complaint in this action was dated February 22, 1973, and was answered by the defendants on July 10 and July 11, 1974. The Court of Common Pleas *(Missal, J.)* on July 8, 1974, found that all persons having an interest in the subject matter of the complaint had received reasonable notice thereof.

On July 11, 1974, the parties executed a stipulation of fact and posed certain questions of law for which they sought by reservation the advice of this court. The stipulation contains a complete state-

ment of the facts, including the exhibits and documents necessary for resolution of the questions propounded by the parties. On July 12, 1974, at the request of and with the consent of all the parties, the court *(Missal, J.)* reserved the questions listed in the stipulation for the consideration and advice of this court.

The No–Fault Motor Vehicle Insurance Act, hereinafter the act, passed by the General Assembly on April 18, 1972, and signed by the governor, constitutes a thorough reform of the automobile accident compensation system in Connecticut. Justification for passage of the act is based upon legislative hearings, and the findings of the special Connecticut study commission, the United States Department of Transportation Automobile Insurance and Compensation Study, and the testimony of numerous witnesses at public hearings. Briefly summarized, the act requires that owners of private passenger motor vehicles in Connecticut and certain other persons provide security for the payment of basic reparations benefits and for residual liability. Basic reparations benefits are provided, without regard to fault, to the basic reparations insured for personal injuries and economic loss suffered as a result of automobile accidents. In consideration of the payment of first party benefits under the act, civil actions may be maintained to recover for noneconomic detriment owing to automobile accidents involving private passenger motor vehicles only when the insured suffers death, permanent injury, fracture of any bone, permanent significant disfigurement, permanent loss of any body function or allowable expense in excess of $400.

The plaintiffs assert broadly and extensively that

in various respects the act is unconstitutional under the federal and state constitutions. They challenge specifically the requirement that they maintain basic reparations security and the restrictions imposed by the act on the allowance of civil actions to recover for noneconomic detriment and economic loss suffered as a result of private passenger motor vehicle accidents.

We find that there are actual bona fide and significant questions in dispute between the parties and a substantial uncertainty as to the legal relationships arising out of the facts stated herein and that the resolution of these questions involves matters of public interest and major importance to the parties and to the people of the state of Connecticut.

I

Synopsis of Act

Because of the complexity of the issues involved, each prong of the plaintiffs' multitined attack upon the constitutionality of the act will be treated separately. As a prologue to an analysis of the questions posed, and in the interests of clarity, the following is a synopsis, section by section, of the salient portions of the act:

Section 38-319. Definition of Terms.

"Basic reparations insured." Refers to those persons entitled to coverage under a policy covering an owner of a private passenger motor vehicle required to be insured.

"Economic loss." Means loss consisting of medical and hospital expenses, lost income from work, and, if death is involved, funeral expenses up to

$2000 and survivor's loss. Medical expense coverage is broad and includes items such as rehabilitation, nursing services, laboratory fees and drugs, and ambulance services. Work loss includes expenses for substitute household services. Survivor's loss means loss of support suffered by dependents after the death of an injured person.

"Non-economic detriment." Means pain, suffering, inconvenience, physical impairment and mental anguish.

"Allowable expense." Means reasonable charges incurred whether or not covered by insurance for reasonably needed products, services and accommodations.

"Private passenger motor vehicle." Means a private passenger, station wagon or camper type automobile (other than a motorcycle) not used as a public or livery conveyance, or an automobile of the truck type with a load capacity of not more than 1500 pounds not used for commercial purposes other than farming.

Section 38-320. Liability of Owner's Insurer for Basic Reparations Benefits. Outlines the coverage provided by the act. The benefits are called "basic reparations benefits" and consist of a uniform, separately identifiable coverage in every automobile policy of $5000 per person per accident for economic loss resulting from injury arising out of the use of an automobile. The section provides that benefits of up to $5000 per person are payable to an injured person or, in case of death, to his survivors. This section also provides that benefits for work loss shall not exceed 85 percent of the value of work loss and that benefits for work loss and survivor's loss shall not exceed $200 per week.

Section 38-321. Payees of Basic Reparations Benefits. Defines the circumstances under which basic reparations benefits will be payable to covered persons. It provides for payment to an owner of a private passenger motor vehicle and his relatives injured while occupying a private passenger motor vehicle or while a pedestrian anywhere in the United States, its territories and possessions, or Canada. It also provides for payment to any other person injured while occupying the owner's car anywhere or while a pedestrian struck by the owner's car in Connecticut.

Section 38-323. When Cause of Action Allowable. Establishes the "threshold" for negligence actions. It provides that an injured person entitled to basic reparations benefits can sue an insured owner for negligence arising out of the use of a private passenger automobile only if the injured person has suffered (1) death, (2) permanent injury, (3) fracture of any bone, (4) permanent significant disfigurement, (5) permanent loss of any bodily function, (6) loss of a body member or (7) medical expenses in excess of $400. Persons receiving free medical, hospital or surgical care are entitled to sue if the reasonable value of such care exceeds $400.

Section 38-325. Subrogation. Concerns reimbursement and subrogation rights of insurers. This section provides that an insurer which has paid basic reparations benefits to an injured person is entitled to reimbursement if the injured person is successful in recovering damages in a negligence suit against another insured owner.

Section 38-326. Residual Liability Insurance. Defines residual liability insurance as being, in

essence, the traditional third party bodily injury and property damage liability insurance for accidents occurring in the United States, its territories and possessions, or Canada. This liability insurance must comply with the financial responsibility minimums.

Section 38-327. Mandatory Security Requirements. (as amended by Public Act No. 74-13). Concerns required coverages. The owner of a private passenger motor vehicle required to be registered in Connecticut is required to provide security for the payment of basic reparations benefits and residual liability insurance. The owner of a private passenger motor vehicle not required to be registered in this state must provide the same security for accidents occurring in Connecticut. Security may be provided by an insurance policy or through various methods of self-insurance.

Section 38-328. Policies Deemed to Provide Required Coverage. Provides that every insurance company authorized to transact the business of motor vehicle liability insurance in Connecticut must declare to the insurance commissioner that its policies provide the security required by this act.

Section 38-329. Property Damage not Included. Specifies that basic reparations benefits do not include property damage.

Section 38-330. Optional Reparations Coverage. Permits the sale of optional added reparations coverages to persons desiring, for example, more than $200 per week coverage for work loss and survivor's loss, or more than $2000 coverage for funeral expenses. The insurance commissioner may require companies to offer specific optional added reparations coverages.

Section 38-333. Payment as Economic Loss Accrues. Provides that benefits are overdue if not paid within fifteen working days after receipt of reasonable proof of the fact and amount of loss realized, except that an insurer may accumulate claims under $100 for up to thirty days. Overdue payments bear 12 percent annual interest. Any amount paid through workmen's compensation is deducted from basic reparations benefits payable for economic loss.

Section 38-334. Award of Attorney's Fees. Permits a court to award the insured's attorney a reasonable attorney's fee for advising a client seeking overdue benefits, or for defending any action brought by an insurer.

Section 38-335. Civil Action for Benefits. Provides a two-year statute of limitations for actions to recover benefits payable under the act.

Section 38-336. Benefits Exempt from Garnishment. Provides that basic and added reparations benefits are exempt from garnishment, attachment, execution and other such claims, except court orders of support, to the same extent that wages are exempt under present law.

Section 38-337. Insurer's Liability for Rehabilitation Treatment or Training. Provides that an insurer is responsible, subject to no-fault coverage limits, for reasonable costs of rehabilitation or rehabilitative occupational training, and provides for appropriate court action if necessary to adjudicate a claim.

Section 38-338. When Benefits Available through Assigned Claims Plan. Outlines the circumstances under which a claim for benefits may be made

through the assigned claims plan. Covered under this section would be a non-car-owning person, injured in Connecticut, who is not otherwise entitled to benefits. Provides for subrogation by an assigned claims insurer against the person or company who initially failed to provide the required benefits.

Section 38-339. Assigned Claims Bureau and Plan. Authorizes insurance companies and self-insurers to establish an assigned claims plan.

Section 38-341. Assigned Risk Plan. Requires that the present assigned risk plan will make basic reparations benefits and residual liability insurance available to all applicants who are in good faith entitled to insurance but are unable to purchase it through ordinary methods.

Section 38-342. Submission of Data to Commissioner. Requires companies to submit rates and rating plans for mandatory insurance to the insurance commissioner individually and not through any rating organization. Further provides that the commissioner shall promulgate a common, uniform statistical plan for claims and loss experience data concerning basic and added reparations benefits.

Section 38-343. Rate Making. Provides standards for establishment of rates for insurance which is mandatory under this act, including the requirement that rates shall not be excessive, inadequate or unfairly discriminatory.

Section 38-344. Insurer to File Certain Information. Requires insurers to file with the insurance commissioner their rates for mandatory coverages at least fifteen days before the rates are to become effective. This fifteen day waiting period may be extended by the commissioner for an additional

thirty days. Filings shall be open to public inspection after they become effective.

Section 38-345. Disapproval of Filing. Provides for the insurance commissioner to disapprove filings which he finds do not meet the requirements of this act and to prevent such filings from becoming effective.

Section 38-346. Form of Policy or Endorsement to be Filed. Requires form for policies providing mandatory coverages to be filed with the insurance commissioner, who may disapprove any policy that is not in accordance with the provisions of this act.

Section 38-347. Insurer to Provide Insured with Rate Information. Requires each insurer which makes its own rates to furnish any insured, upon written request and payment of such reasonable charge as it may make, all pertinent information as to any rate affecting such insured. Also provides a hearing and appeal to the insurance commissioner.

Section 38-348. Penalty. Provides a maximum fine of $1000 for violation of any provisions of the act. Authorizes the insurance commissioner to suspend the license of any insurer which fails to comply with an order of the commissioner. Requires a hearing before a license may be suspended or revoked.

Section 38-349. Hearings on Orders of the Commissioner. Appeals. Provides a hearing procedure for any insurer aggrieved by any order or decision of the insurance commissioner made without a hearing. Provides that any order or decision of the commissioner shall be subject to a review of facts and law by an appeal to the Court of Common Pleas in Hartford County.

Section 38-350. Conflict with Chapters 246, 247, 248. Provides that in the event of any conflict between the provisions of this act and the provisions of the presently existing statutes concerning motor vehicles, the latter shall prevail.

Section 38-351. Rate Reductions. Requires a 10 percent reduction in rates for coverages affected by this act, and directs the insurance commissioner to determine and order further such rate reductions commensurate with rating experience in accordance with §§ 38-343 to 38-349 inclusive, of this act.

Section 38-351a. Declaratory Judgment Action to Determine Constitutionality. Authorizes any Connecticut resident to bring an action for a declaratory judgment to determine the constitutionality of this act.

Section 14-112. Proof of Financial Responsibility. Authorizes the commissioner of motor vehicles to require proof of financial responsibility from any person who has failed to provide the security required by this act, and to suspend or revoke the license and registration of any such person until such proof is furnished.

1972 Public Acts, No. 273, § 36. Provides that §§ 38-319, 38-339, 38-341, 38-342 to 38-349 inclusive, 38-350 and 38-351a of this act shall take effect upon passage. All other sections shall take effect January 1, 1973.

II

Jurisdiction

The case under consideration might be termed a jurisdictional hybrid, having followed a rather circuitous path to reach this court. Section 38-351a,

printed in full in the footnote,[1] represents an attempt by the legislature to seek this court's opinion prior to the effective date of the act on the various foreseeable constitutional questions that almost inevitably would arise upon its implementation. That portion of the act to which these questions apply was effective January 1, 1973. However, § 38-351a was effective May 19, 1972, the date of its approval, and by this provision the legislature sought to eliminate what it foresaw as the principal

[1] "[General Statutes] Sec. 38-351a. DECLARATORY JUDGMENT ACTION TO DETERMINE CONSTITUTIONALITY. The general assembly finds and declares that a grave question of law exists with respect to the constitutionality of some of the sections of this chapter, similar provisions having been declared unconstitutional in another state, and that the public welfare requires that such question with respect to this chapter be resolved with expedition prior to such time as the mandatory provisions hereof shall take effect in order to avoid disruption of the orderly implementation of said provisions. The supreme court of this state has held (114 Conn. 297, 301; 145 Conn. 570, 575) that the remedy by means of declaratory judgment, available under section 52-29, is highly remedial, that the statute and rules should be accorded a liberal construction to carry out the purposes underlying such judgments, one great purpose being to enable parties to have their differences authoritatively settled in advance of any claimed invasion of rights, and that the provision that there be an issue in dispute requiring settlement between parties means no more than that there must appear a sufficient practical need for the determination thereof. Therefore, the general assembly finds that the remedy of declaratory judgment to determine the constitutionality of the provisions of this chapter should be immediately made available to determine that important question, in order to avoid utter confusion by the public in the event this chapter is declared unconstitutional after January 1, 1973. Therefore, any resident of the state is authorized to forthwith bring an action for a declaratory judgment in the superior court, or the court of common pleas for Hartford county, against the insurance commissioner of the state to determine the constitutionality of said provisions. Such court shall reserve the questions of law for the advice of the supreme court as provided in section 52-275 and section 738 and 739 of the Connecticut Practice Book. In the interest of expediting a decision, the supreme court may suspend its rules as provided in section 762 of the Connecticut Practice Book."

causes of procedural delay in achieving a prompt judgment from this court. The unfortunate effect of this section in its actual application was to color with uncertainty some of the acts of the parties performed in perfecting the present reservation.

To avoid procedural impediments to a full and final determination of all of the issues presented, the parties agreed upon a course that, in their determination, satisfied our traditional procedures for such actions as well as the requisites of § 38-351a. The action was begun, as intended by the legislature, prior to the effective date of the challenged provisions; however, the complexity of the various issues and the enormous and far-reaching consequences of any judicial resolution, of necessity affecting a significant class of potential parties, mandated a very deliberate, thorough notice process to define the necessary parties and to ensure their opportunity to participate. Thus, more than two years subsequent to the effective dates of the complete act, the case finally has reached the threshold of resolution.

The plaintiffs have raised some questions with respect to which their standing is uncertain, but the parties have urged that we exercise our discretion and consider all issues raised in this action. We adhere to our rule that where, as here, the plaintiffs have standing to raise certain issues pertaining to the controversy, this court, in matters of significant public moment where the public interest would best be served by a dispersal of all constitutional clouds over the act in question, will exercise that discretion and decide all closely related issues. *Heiberger* v. *Clark,* 148 Conn. 177, 184, 169 A.2d 652; *West* v. *Egan,* 142 Conn. 437, 441, 115 A.2d 322; *Ruppert* v. *Liquor Control Commission,* 138 Conn. 669, 673, 88

A.2d 388. The parties have meticulously respected the bounds of propriety in developing the class of plaintiffs and defendants actually involved, and we find that further efforts to join all of those who have standing to raise each of the remaining few particular issues for which the present parties' standing may be challenged might well border on barratry. The interests of the plaintiffs are unquestionably adverse to those of the defendants and, further, their interest in nearly all aspects of this controversy is sufficient to guarantee a true and complete adversary presentation of all the questions discussed in the briefs.

Numerous specific questions are propounded in the stipulation for reservation; the parties, however, centered their attention on certain major issues, leaving others unmentioned in their briefs. The exercise of our discretion to waive the standing requirements for each issue cannot be extended to allow us to treat those issues not briefed. Rather than answer each question as propounded in the stipulation, we have chosen to follow the format suggested by the briefs and will discuss the issues as they were therein raised and argued.

III

Nature of Constitutional Rights Involved

The portion of the act to which the strongest objections are addressed is that which limits an injured party's cause of action, based upon the claimed fault of another, for the recovery of general and special damages. The challenge to § 38-323,[2]

[2] Because of its revolutionary impact upon our jurisprudence § 38-323 is printed in full.

"[General Statutes] Sec. 38-323. CAUSE OF ACTION ALLOWABLE, WHEN. (a) No cause of action to recover economic loss or noneconomic detriment based on negligence arising out of the ownership, maintenance or use of a private passenger motor vehicle may be maintained against an owner, registrant, operator or occupant of a private passenger motor vehicle with respect to which security has been provided as required by this chapter, or against any person or organization legally responsible for his acts or omissions, unless the injured party has sustained (1) death, (2) permanent injury, (3) fracture of any bone, (4) permanent significant disfigurement, (5) permanent loss of any bodily function, (6) loss of a body member or (7) allowable expense as defined in section 38-319 in excess of four hundred dollars. Any person who receives free medical, hospitalization and surgical care shall be deemed to meet the requirement of subdivision (7) if the reasonable value of such care exceeds four hundred dollars.

(b) The exemption under subsection (a) of a person from liability to pay damages for injury applies only with respect to injury to (1) owners of private passenger motor vehicles with respect to which security is required under this chapter, (2) persons entitled to basic reparations benefits from any such owner or his insurer or through the assigned claims plan, and (3) persons who would be entitled to such benefits but for section 38-331 or 38-332."

initially, is grounded upon provisions of our state constitution, and thereafter and in addition thereto, upon provisions of the federal constitution.

Article first, § 10, of the Connecticut constitution (formerly article first, § 12) provides that "[a]ll courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay." This provision appears in the constitution of 1818 and in its several revisions and reenactments, and has been referred to as the right to redress. *State* v. *Perkins,* 88 Conn. 360, 368, 91 A. 265. Its importance in this dispute is illustrated by the following language from *Munn* v. *Illinois,* 94 U.S. 113, 134, 24 L. Ed. 77: "A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed

at the will, or even at the whim, of the legislature, *unless prevented by constitutional limitations.* Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances." (Emphasis added.)

The plaintiffs essentially contend that article first, § 10, restricts the power of the legislature to abolish a cause of action recognized at common law. They refer to the right to bring an action in tort to recover damages as a common-law right, but their analysis is incomplete. Clearly, if the nature of this right to sue is, in its fullest extent, a common-law right, then, with a possible limitation to be discussed shortly, the power of the legislature to abolish such a right is fundamental. If this right to sue, however, is a constitutional right, it is equally clear that the power of the legislature to abrogate it is curtailed by article first, § 10. There being no statutory right herein applicable, there remain three classes into one of which this right to sue in tort for damages from automobile mishaps must fall: (1) common-law right, (2) constitutional right, or (3) constitutionally incorporated common-law right. Some discussion of (1) and (2) is necessary before we consider (3), which we have referred to as a constitutionally incorporated common-law right.

Early in the development of our system of jurisprudence we adopted from the English common law the action of trespass on the case. 2 Swift, System of the Laws of the State of Connecticut, p. 29. As stated by Zephaniah Swift in 1796, "if any damage is caused to another, for the want of due care and attention, or by the folly of the defendant, this action [trespass on the case] lies." Id., 108. An

action sounding in negligence for damages for personal injuries sustained in an automobile mishap is one modern manifestation of this ancient cause of action. Wright & Fitzgerald, Connecticut Law of Torts, § 4, p. 6. In its early form, it predates our constitution of 1818, and it is no great labor of logic to conclude that the framers of the constitution intended that our courts be available for redress of this type of injury. If viewed as a limitation on the right to redress for an injury caused by negligence, the restriction under consideration stands contrary to the mandate of article first, § 10, and thus must fall. Section 38-323, however, does not restrict the right to redress for an actionable injury but, rather, redefines the injury or the class of persons injured to which this constitutional right of redress attaches. What is of constitutional dimensions, then, is the right of redress and not the nature of the particular injury for which redress is sought. Stated differently, the right to redress in the courts must remain inviolate but it does not attach unless one suffers a recognized injury.

To quote once again the language used by Swift almost 200 years ago: "A wrong or injury is defined to be a deprivation, or infringement of right." In *Taylor* v. *Keefe,* 134 Conn. 156, 163, 56 A.2d 768, we defined "injury" as the term is used in article first, § 10 (then article first, § 12) to mean "a legal injury, that is, one violative of established law of which a court can properly take cognizance." Support for this construction was found in the courts of Montana and Pennsylvania, states having like constitutional provisions. See *Stewart* v. *Standard Publishing Co.,* 102 Mont. 43, 49, 55 P.2d 694; *Jackman* v. *Rosenbaum Co.,* 263 Pa. 158, 168, 106 A. 238. The rule has been further modified in *Benson* v. *Housing Authority,* 145 Conn. 196, 201–2, 140 A.2d

320, to the effect that an injury is not compensable absent recognition of that injury either by our courts or by specific statutory provision. Thus refined, the phrase "established law" within the definition of "injury" encompasses legislative law as well as judge-made law. See *Lockwood* v. *Wilson H. Lee Co.,* 144 Conn. 155, 159, 128 A.2d 330.

Viewing injury, then, as the violation of a right established by law, we conclude that it is within the province of the legislature to redefine or abolish existing definitions of injury since it is within its province to create, abrogate or redefine the "established law." *Munn* v. *Illinois,* supra. Thus the right of redress for injury is constitutional in its nature but the nature of a specific injury is a right derived from the common law or statute. Insofar as § 38-323 merely redefines injury it does not infringe upon the right to redress. As this court stated in *Pierce* v. *Albanese,* 144 Conn. 241, 250–51, 129 A.2d 606, appeal dismissed, 355 U.S. 15, 78 S. Ct. 36, 2 L. Ed. 2d 21, upholding the constitutionality of Connecticut's dram shop statute: "The legislature in the exercise of its police power can alter or abolish accepted principles of common-law liability to pay compensation for injuries without violating constitutional mandates."

We move then to a consideration of the third of the categories into which must fall this right to sue in tort for damages from automobile mishaps which we have termed the hybrid "constitutionally incorporated common-law right." The limitation previously referred to upon the legislature's ability to abolish common-law rights arises from the incorporation of those rights into our constitution by virtue of the adoption of article first, § 10 (formerly article first, § 12). Simply stated, all rights derived

by statute and the common law extant at the time of the adoption of article first, § 10, are incorporated in that provision by virtue of being established by law as rights the breach of which precipitates a recognized injury, thus being exalted beyond the status of common law or statutory rights of the type created subsequent to the adoption of that provision. *Kluger* v. *White,* 281 So. 2d 1, 4–5 (Fla.); 16A C.J.S., Constitutional Law, § 710, pp. 1218–19; Ruben & Williams, The Constitutionality of Basic Protection, 1 Conn. L. Rev. 44, 46 n.13, and cases cited therein.

The adoption of article first, § 10, recognized all existing rights and removed from the power of the legislature the authority to abolish those rights in their entirety. Rather, the legislature retains the power to provide reasonable alternatives to the enforcement of such rights. Where such reasonable alternatives are created, the legislature may then restrict or abolish the incorporated common-law or statutory rights. *Kluger* v. *White,* supra; Ruben & Williams, supra. The defendants have argued that injury from the negligent operation of an automobile is a creature of the twentieth century and thus could not have been contemplated as an incorporable common-law right by the framers of the constitution of 1818. The argument is appealing but fails to recognize the jurisprudential underpinnings of the automobile negligence personal injury cause of action, which we noted earlier to be trespass on the case. Thus the classical theory upon which recovery is based in such actions was redressable under our first constitution, and the automobile negligence injury, being a specific modern manifestation of this theory, is well vested in our "established law" and therefore within the so-called hybrid status.

Having thus concluded that the right to recover for injury from automobile negligence is a hybrid common-law right within the third of the three defined classes, we must next consider whether the legislatively created remedy by which it is in part replaced is a reasonable alternative. *Mountain Timber Co.* v. *Washington,* 243 U.S. 219, 240–41, 37 S. Ct. 260, 61 L. Ed. 685; *New York Central R. Co.* v. *White,* 243 U.S. 188, 201, 37 S. Ct. 247, 61 L. Ed. 667; *Kluger* v. *White,* 281 So. 2d 1, 4–5 (Fla.); *Pinnick* v. *Cleary,* 360 Mass. 1, , 271 N.E.2d 592.

IV

Reasonable Alternative

The question as to whether the legislatively created remedy is a reasonable alternative is best decided by viewing in the aggregate the remedies which the act provides. The question of no-fault automobile insurance has been studied on federal and state, private and public levels for several years and, without abrogating our judicial function, it seems appropriate to discuss at least some of the policy arguments that precipitated the passage of the act.

Enactment of the Connecticut no-fault insurance act resulted from the historical confluence of popular disaffection with the inadequacies of the automobile accident compensation system based on fault, the availability of empirical data from systematic studies of alternative automobile accident reparations systems, and the willingness of the legislature to respond to the popular will. Public awareness of the deficiencies and inequities of the tort liability system for the compensation of victims of motor vehicle accidents was heightened and encouraged by the publication in 1965 of a study entitled "Basic

Protection for the Traffic Victim" by Professors Robert E. Keeton and Jeffrey O'Connell. This detailed work identified weaknesses and inefficiencies inherent in an automobile reparations system based on fault.

In May, 1968, the Congress of the United States in Public Law 90-313 directed the secretary of transportation of the United States to investigate the motor vehicle accident compensation system and to report to the Congress his findings, conclusions and recommendations for legislation. Pursuant to this congressional mandate, the secretary of transportation and his successor conducted an exhaustive study, using resources of the department and numerous nongovernmental experts retained to contribute to the study. The ultimate findings of the department of transportation study, hereinafter DOT study, were that the states should strive toward: a system of no-fault insurance (1) based on universal compulsory first party insurance coverage serviced by private insurance companies and providing protection for all motor vehicle owners by covering all economic losses above voluntarily accepted deductibles up to reasonably high limits; (2) coupled with restrictions on the availability of resort to litigation by motor vehicle accident victims for economic losses or for intangible losses except in truly serious cases. DOT study, supra.

Contemporaneously with the publication of the DOT study, the need to investigate the inadequacy of the existing system for compensation of automobile accident victims in Connecticut led to the enactment of 1971 Special Act No. 143 to establish a committee to undertake a comprehensive study and make recommendations for legislation. The study commission was charged to study and make

suggestions regarding automobile accidents, including their prevention and consequences, and related insurance, motor vehicle and procedural laws bearing thereon, and to determine whether such laws, together with the statutory rules of the road, most effectively contribute to the prevention of automobile accidents and the expeditious and adequate financial recourse of automobile accident victims. This commission, after an exhaustive study, recommended that the legislature adopt "an evolutionary approach to improving Connecticut's present tort liability system to the end that a greater number of injured persons will receive payment for their injuries and damages by mandatory first party payments to be made without regard to fault." The commission further suggested that suits for pain and suffering be abolished except in circumstances involving death, serious injury as defined by the commission report, or economic loss above a threshold. Substitution of the first party benefits for the tort remedy was necessary to pay for the additional first party coverages recommended and to obtain the dollar premium savings which the public expected.

Upon receipt of the study commission's report, the General Assembly in 1972 began consideration of a no-fault insurance bill. Substitute House Bill No. 5479 entitled "An Act Concerning No-Fault Motor Vehicle Insurance" was the subject of thorough and extensive hearings before the joint judiciary and insurance and real estate committee of the General Assembly in April of 1972. The joint committee also received a detailed cost-benefits analysis of no-fault insurance from a consumer viewpoint estimating the likely savings in insurance premiums to be obtained through the use of a no-fault insurance system, prepared at the request of the study

commission and joint committee by Neill W. Portermain, an actuarial consultant. Portermain analyzed the effect of the legislature's modification of the threshold from $750 in total economic loss recommended by the commission to the $400 in medical expenses ultimately incorporated into the act. This modification necessitated a total recosting of the plan by Portermain; and his April 3, 1972 testimony before the joint committee was thus a further clarification and refinement of the study which he had previously conducted. His conclusion was that the grading of the threshold to $400 in medical expenses would produce a cost analysis very close to the one which he had originally conducted based on a $750 total economic loss threshold. It is readily apparent that the study commission and the joint committee were concerned with guaranteeing the prompt payment of benefits to injured parties while at the same time achieving a reduction in insurance premiums and an increase in efficiency in the reparations system. The General Assembly, after lengthy debate concerning all the materials and studies hereinbefore discussed and the policy considerations concerning and surrounding no-fault legislation, passed Substitute House Bill No. 5479 on April 18, 1972. The act was signed and approved by the governor on May 19, 1972.

Even a brief perusal of the thirty-six sections of the act demonstrates clearly that it is a legitimate legislative response to the specific causes of public discontent and disaffection with the motor vehicle accident compensation system based on fault. Sections 38-320—38-322 provide first party compensation, enabling an injured party to obtain prompt recompense for his most serious financial needs without bearing the expense and lengthy delay associated with litigation to establish fault. Further-

more, the benefits provided by this first party coverage are disbursed immediately following the accrual of the loss. Section 38-337 appears to be a specific response to the findings of the department of transportation study on the rehabilitation of automobile accident victims. DOT study, "Rehabilitation of Auto Accident Victims." The basic reparations insurer is responsible for the cost of a procedure or treatment of rehabilitation when the program of rehabilitation is reasonable, its cost is reasonable, and there is a reasonable likelihood that the program will contribute to rehabilitation, even if it will not enhance the injured person's earning capacity.

Section 38-323 is an attempt to cure several defects in the fault compensation system as noted by the department of transportation and the study commission. The fault system's reliance on litigation in minor claims caused administrative inefficiencies which resulted in payment of only forty-four cents of every dollar of premiums as benefits to insured victims, and caused overcompensation of small claims below $500 as well as extreme pressure on court dockets. No cause of action for economic loss or noneconomic detriment based on negligence may be maintained under the act unless the injured person has satisfied the exceptive criteria of § 38-323.

Sections 38-341—38-349 are regulatory measures which provide that the insurance commissioner shall supervise the insurance industry to the end that insurers provide coverage under the act at reasonable rates and that all persons are able to obtain such coverage either through the normal insurance market or through the assigned risk plan. Finally, § 38-351 demonstrates the legislature's awareness of the popular belief that insurance rates were unnecessarily high as a result of the fault system and mandated a reduction in rates of 10 percent, thus passing directly to the consumer the benefits of increased administrative efficiency provided by the no-fault system.

Since, however, it is within the power of the legislature to create reasonable alternative remedies, our review of the act's relation to article first, §10, is limited to the issue of reasonableness and not to whether such an alternative is necessary in the first instance. Opponents of no-fault insurance focus their arguments upon the act's effect on the nonexempted plaintiff (that is, the plaintiff who fails to satisfy any of the exceptive criteria of § 38-323 and thus must accept only the basic reparations offered under the act) and question the substitution of the act's remedies as to this plaintiff, as an alternative to the prior unrestricted tort cause of action. What is given in return for the disallowance of this cause of action, however, is immediate payment of reasonable medical expenses and economic loss. In comparison, the nonexempted plaintiff forgoes damages for mental anguish, physical impairment, and pain and suffering. The act thus restricts the extent of recovery to injuries of greater magnitude where attendant pain and suffering, in the determination of the legislature in the great majority of cases, will be extensive. Thus the act is a legislative realization that minor injury cases (nonexempted plaintiffs) involve little in the way of noneconomic detriment and that the injured party is better compensated by immediate payment of the act's defined first party benefits.

Standing alone, the nonexempted plaintiff's alternate remedies may not equate with the foregoing tort remedies. It must be recognized, however, that

the law requires a reasonable alternative and not an exact equation of remedies. Thus for each remedy or item of damage existing under the prior fault system, it is not required that that item be duplicated under the act but that the bulk of remedies under the act be of such significance that a court is justified in viewing this legislation on the whole as a substitute, the benefits from which are sufficient to tolerate the removal of the prior cause of action. Having thus viewed the act, we are not limited to a consideration merely of its effect upon the nonexempted plaintiff. When one enters upon the highway he or she is, at the same time, a potential plaintiff and a potential defendant. *Pinnick* v. *Cleary,* 360 Mass. 1, , 271 N.E.2d 592. We must then add to the benefits accorded the nonexempted plaintiff the immunity granted by the act to his defendant-counterpart. Therefore, while limiting recovery for the nonexempted plaintiff, the act further assures each insured that when he is placed in the role of tortfeasor he is granted immunity from suit to the extent that his victim is in the nonexempted category. Added to this is the reduced premium for such first party coverage because of the compulsory nature of the act. It is this aggregate of benefits to the insured that clearly falls within the ambit of reasonable alternative. By similar reasoning the Supreme Judicial Court of Massachusetts sustained its no-fault act. *Pinnick* v. *Cleary,* supra. Comparing the effect of the act's remedies to the prior tort system, employing as an analogue the rationale and analysis of *New York Central R. Co.* v. *White,* 243 U.S. 188, 37 S. Ct. 247, 61 L. Ed. 667, which sustained New York's Workmen's Compensation Act as a reasonable substitute for prior common-law tort remedies abrogated by the act, the Massachusetts court stated (p.): "The effect of . . . [the no-fault act] on Massachusetts motorists thus is to provide benefits in return for affected rights at least as adequate as those provided to New York employers and employees in return for rights taken by the act in the *White* case."

V

Equal Protection

The final attack by the plaintiffs on § 38-323 is founded upon the fourteenth amendment to the United States constitution and article first, § 20, of the Connecticut constitution and claims, in essence, that this provision of the act denies the plaintiffs the equal protection of the laws, it being argued that denying nonexempted plaintiffs the cause of action that remains to exempted plaintiffs is an invidious discrimination. This question has been presented in a number of jurisdictions and resolved, in the majority of cases, in favor of constitutionality. See *Lasky* v. *State Farm Ins. Co.,* 296 So. 2d 9 (Fla.); *Manzanares* v. *Bell,* 214 Kan. 589, 522 P.2d 1291; *Pinnick* v. *Cleary,* 360 Mass. 1, 271 N.E.2d 592; *Opinion of the Justices,* 113 N.H. 205, 304 A.2d 881; see contra, *Grace* v. *Howlett,* 51 Ill. 2d 478, 283 N.E.2d 474; *Montgomery* v. *Daniels,* 367 N.Y.S.2d 419 (N.Y. Supreme Ct.). See also *Gaines* v. *Mohawk Motor, Inc.,* 43 U.S.L.W. 2074 (Mich. Cir. Ct.).

Given our previous analysis concluding that the act presents a reasonable alternative remedy to the prior fault system for nonexempted plaintiffs, we cannot conclude that the discrimination between the class of exempted and nonexempted plaintiffs is invidious or unreasonable, since each is remedied sufficiently, albeit by different routes. The issue presented is whether this classification or discrimination bears a rational relationship to a legitimate state end and is based on reasons related to the pur-

suit of that goal. *McDonald* v. *Board of Election Commissioners,* 394 U.S. 802, 808–9, 89 S. Ct. 1404, 22 L. Ed. 2d 739. As the Supreme Court stated in *Reed* v. *Reed,* 404 U.S. 71, 75, 92 S. Ct. 251, 30 L. Ed. 2d 225: "[T]he Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. *Barbier* v. *Connolly,* 113 U.S. 27 [5 S. Ct. 357, 28 L. Ed. 923] (1885); *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61 [31 S. Ct. 337, 55 L. Ed. 369] (1911); *Railway Express Agency* v. *New York,* 336 U.S. 106 [69 S. Ct. 463, 93 L. Ed. 533] (1949); *McDonald* v. *Board of Election Commissioners,* 394 U.S. 802 [89 S. Ct. 1404, 22 L. Ed. 2d 739] (1969). The equal protection clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' *Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415 [40 S. Ct. 560, 64 L. Ed. 989] (1920)."

Similarly, in Connecticut, we have discussed the constitutional tests relevant to this issue in *Tough* v. *Ives,* 162 Conn. 274, 292–93, 294 A.2d 67: "The legislative act, moreover, may not establish classes that have no reasonable relation to any permissible, public purpose. This does not, of course, prevent the legislature from dealing differently with different classes of people. It means only that classifications must be based on natural and substantial differences, germane to the subject and purpose of the legislation, between those within the class

included and those whom it leaves untouched. *Lyman* v. *Adorno* . . . [133 Conn. 511, 521, 52 A.2d 702]; *State* v. *Cullum,* 110 Conn. 291, 295, 147 A. 804." Differences of treatment under law should not be approved when they are based on classifications unrelated to the legislative purpose. *Tough* v. *Ives,* supra, 293.

Justice Holmes, although considered no true friend of the equal protection challenge by virtue of having referred to "equal protection" as the "last resort of constitutional lawyers,"[3] once stated: "[W]hen it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark." *Louisville Gas & Electric Co.* v. *Coleman,* 277 U.S. 32, 41, 48 S. Ct. 423, 72 L. Ed. 770. The legislature, having concluded that compelling public interests in accident reparations would best be served by eliminating the fault concept in minor motor vehicle accidents, established the threshold monetarily at $400. The Portermain actuarial studies of the effect of the $400 threshold and a $750 threshold resulted in the conclusion that the legislature's purpose would be served better by the lower mark. The prior unrestricted system of remedy for accident victims has developed into a forensic Medusa. Those approaching it often stood rock hard facing the inevitable delays and uncertainties inherent in contested trials. The concept of general damages has been lost sight of and, in its place, there has emerged a system of frequent overcompensation for victims with minor injuries, which, in effect, represents the

[3] Cowen, Due Process, Equal Protection and "No-Fault" Allocation of the Costs of Automobile Accidents, in DOT Study, Constitutional Problems in Automobile Accident Compensation Reform, pp. 1, 17.

price paid by liability insurers to forgo the long, expensive process of litigation. An unfortunate concomitant of this has been the undercompensation of cases of a truly serious nature. If anything, the act tends to be an equalizer, providing the more seriously injured the opportunity to seek true redress. Certainly, those injured who hover on either side of the $400 threshold may suggest imperfections in this system, in that one who incurs $399.99 in allowable expense fails to satisfy that criterion for exemption, while another incurring $400.01 in expenses is exempted. Yet in every instance where a line must be drawn or a cutoff established there are those who fall directly on either side. This is but one of the vagaries of life to which we accustom ourselves and which we accept in our daily affairs, but we cannot, for this reason, find the act unreasonable in its purpose and overall effect. We rely, instead, on the thought that no matter to which side of the line a party is placed his remedies are sufficient and reasonable.

VI

Jury Trial

The plaintiffs argue that article first, § 19 (formerly article first, § 21) which mandates that the right to trial by jury remain inviolate is subverted by § 38-323. The right to trial by jury attaches at the point that one's right to redress vests under article first, § 10. Thus, insofar as the act does not restrict the right to redress, exempted plaintiffs retain their right to a trial by jury. The constitutional prohibition on the abridgement of the jury trial right historically has been interpreted to apply, not in all possible instances, but only in those cases for which the right existed when the constitution was adopted. *La Croix* v. *County Commissioners,* 50 Conn. 321, 327; *Goddard* v. *State,* 12 Conn. 448, 454. Thus as to cases triable to the jury prior to the constitution of 1818, and extant at the time of its adoption, the right may not be abolished. That is to say, for example, that had the legislature provided in the present case that, rather than abolish the cause of action for nonexempted plaintiffs, factual issues in such instances are to be tried to a commissioner or the court without a jury, this would offend article first, § 19. This constitutional prohibition is not concerned, however, with the abolition of or limitation on causes of action, for, if such were the case, no statute of limitations would pass its scrutiny. Rather, it mandates that, given a recognized cause of action to which the right to trial by jury attached prior to the existing constitution, the right to trial by jury must always be available in the trial of that cause. See *United States Fidelity & Guaranty Co.* v. *Spring Brook Farm Dairy, Inc.,* 135 Conn. 294, 297, 64 A.2d 39; *State* v. *Torello,* 103 Conn. 511, 514, 131 A. 429; *Roy* v. *Moore,* 85 Conn. 159, 167, 82 A. 233.

VII

Mandatory Security

The fact that the act mandates compulsory security and directs that uninsured owners of private passenger vehicles with liability to injured parties under the act post security and provides penal sanctions for failure to carry such security is not offensive to the state or federal constitutions. Since it is within the province of the legislature to create alternative remedies, and since we have found these remedies to be reasonable, it is merely an exercise of the police power to direct that all

private passenger vehicle owners carry basic security. The no-fault system continues as a reasonable alternative only if it can assure those who seek to benefit from it or who suffer loss as a result of it (nonexempted plaintiffs) that the system applies uniformly. If substantial numbers of persons are left remediless, such as nonexempted plaintiffs injured while passengers in automobiles owned by persons who fail to carry the basic security, or if the act fails to compensate nonexempt plaintiffs for their full economic loss, it may fail to sustain itself as a reasonable alternative. See *Kluger* v. *White,* 281 So. 2d 1 (Fla.); *Gaines* v. *Mohawk Motor, Inc.,* 43 U.S.L.W. 2074 (Mich. Cir. Ct.).

It is within the police power of the legislature to regulate the use of our highways and, as an incident thereto, the use of vehicles upon the highways; *Silver* v. *Silver,* 108 Conn. 371, 377, 143 A. 240, aff'd, 280 U.S. 117, 50 S. Ct. 57, 74 L. Ed. 221. There we approved of the so-called guest statute as a reasonable act by the legislature within this regulatory power, and the affirming opinion by the United States Supreme Court contains language that may be adapted to the present controversy: "Whether there has been a serious increase in the evils of vexatious litigation in this class of cases, where the carriage is by automobile, is for legislative determination and, if found, may well be the basis of legislative action further restricting the liability. Its wisdom is not the concern of courts." *Silver* v. *Silver,* 280 U.S. 117, 123, 50 S. Ct. 57, 74 L. Ed. 221. And the fact that the provisions apply only to private passenger vehicles and not to commercial vehicles and common carriers is further answered in the Supreme Court opinion (p. 123): "[T]here is no constitutional requirement that a regulation, in other respects permissible, must reach

every class to which it might be applied—that the legislature must be held rigidly to the choice of regulating all or none. *Patsone* v. *Pennsylvania,* 232 U.S. 138, 144 [34 S. Ct. 281, 58 L. Ed. 539]; *Miller* v. *Wilson,* 236 U.S. 373, 382, 384 [35 S. Ct. 342, 59 L. Ed. 628]; *International Harvester Co.* v. *Missouri,* 234 U.S. 199, 215 [34 S. Ct. 859, 58 L. Ed. 1276]; *Barrett* v. *Indiana,* 229 U.S. 26, 29 [33 S. Ct. 692, 57 L. Ed. 1050] . . . . It is enough that the present statute strikes at the evil where it is felt and reaches the class of cases where it most frequently occurs."

Section 38-327 (e) provides that all obligations of §§ 14-112 to 14-144 of the financial responsibility law shall remain, while § 38-350 gives the provisions of title 14 primacy over the act in cases of conflict. It should be noted that under § 14-112 it is unclear whether the language, and thus the obligations thereby created, apply solely to owners of vehicles or to operators also, although in *Dempsey* v. *Tynan,* 143 Conn. 202, 120 A.2d 700, we construed these provisions to be applicable to owners and operators alike. Reading these provisions consistently with § 38-327; *Collins* v. *York,* 159 Conn. 150, 162, 267 A.2d 668; we find that the financial responsibility law, as incorporated in § 38-327 (e), must be construed to apply solely to owners of vehicles rather than nonowner operators, to be consistent with the obligations of § 38-327. The no-fault act merely makes insurance a necessary incident of ownership, not of mere operation. Thus, if a driver who does not own a vehicle is operating a private passenger automobile of another individual who does not carry the basic security, in the event of a mishap precipitating a need for basic reparations benefits, for example an injury to a passenger in that vehicle, the owner, who has consciously chosen not to carry security nor file as a self-insurer, and not the opera-

tor, is liable under § 38-327 (e). To require otherwise might subvert the concept of "no-fault" and could, arguably, result in a deprivation of property of the nonowner operator without due process of law if the operator is the innocent victim of another motorist's delict.

Section 14-112 lists a variety of offenses the commission of which jeopardizes one's operator's license unless a certificate of insurability (form SR-22) is filed indicating proof of insurance. As to owners of private passenger vehicles, no self-incrimination problem exists since it is not required that a signed statement be filed as to whether or not the owner is insured. The owner may elect not to file the form SR-22 and suffer suspension, not necessarily criminal prosecution under § 38-327 (d). Since only owners must carry basic security, however, the privilege or right to hold an operator's license may not be jeopardized if a nonowner operator of a vehicle is not personally insured. Thus, title 14 and title 38 read consistently allow the commissioner to order a certificate of insurability from a vehicle owner, although an operator may still be held to post security under the provisions of title 14.

The financial responsibility law was construed in *Dempsey* v. *Tynan,* supra, 208: "The purpose of the legislature in enacting the financial responsibility provisions of the motor vehicle law was to keep off our highways the financially irresponsible owner or operator of an automobile who cannot respond in damages for the injuries he may inflict, and to require him, as a condition for securing or retaining a registration or an operator's license, to furnish adequate means of satisfying possible claims against him." The effect of § 38-327 is to make the vehicle owner responsible for basic reparations, and thus

no necessity exists to require that the nonowner operator post similar security under this statute or jeopardize his license.

As to another of the plaintiffs' arguments that this legislation forces the owners of private passenger vehicles to deal with private, profit-seeking companies, we can do no better than to quote the opinion of Justice Reardon in *Pinnick* v. *Cleary,* 360 Mass. 1, , 271 N.E.2d 592, upholding the Massachusetts no-fault act: "Nor can the plaintiff complain because the medium through which the . . . self-protection must be obtained is a private, profit-making corporation, as opposed to some kind of governmentally managed pool. . . . We see no distinction for due process purposes between the requirement of private insurance for self-protection and for the protection of others. It is an incidental and completely nonobjectionable concomitant of many regulatory statutes that citizens are required thereby to enter into transactions for their own benefit with private corporations."

The plaintiffs claim that the underwriting guidelines currently employed by several insurers violate their rights to due process of law and equal protection of the law. The claim is founded upon an allegation that these guidelines are essentially arbitrary and unreasonable, that refusal to accept an applicant's request for insurance stigmatizes that applicant as an unsavory risk thus prejudicing his ability to obtain coverage from one of the other 186 companies in the state and thereby forcing that person to obtain coverage under the assigned risk plan or to face prosecution and license suspension for failure to carry security. We are not persuaded to find as the plaintiffs suggest. The legislature has established a medium for administrative and judicial

review whereby any potential insured who feels himself aggrieved by the rates or underwriting policies of any insurer can secure a review of that claim by the company, by the insurance commissioner, and ultimately by the courts. General Statutes § 38-208p.

Under Connecticut's assigned risk plan, known as the Connecticut automobile insurance plan, established pursuant to § 14-130, the relevant insurance to satisfy the requirements of the act is available to every driver. This plan requires each of the 187 insurance companies, in proportion to their automobile insurance writings in Connecticut, to insure the "small number of applicants" who are considered to be unreasonably high risk applicants. The availability of insurance to all applicants through the plan is documented in the DOT study of assigned risk plans which specifically notes that Connecticut is one of only nine states whose assigned risk plans guarantee coverage to every licensed driver who continues to pay the premiums. The presence of the insurance commissioner of Connecticut as an ex officio member of the governing board of the Connecticut automobile insurance plan further demonstrates the state's commitment to assure the availability of insurance at reasonable rates for all licensed applicants. It also is appropriate to note that the number and identity of persons purchasing insurance through the assigned risk plan varies from year to year as persons in the assigned risk plan find insurance available to them through the ordinary market place, while others, because of their driving records, find they must purchase insurance through the assigned risk plan. And finally, § 38-327 (a) does not by its terms require the security to be purchased from private insurers; indeed,

as the parties have stipulated, at least three owners self-insure under the act.

VIII

Fifth Amendment Considerations

The plaintiffs complain that § 38-327 (d), which imposes criminal sanctions for failure to carry the required security, when combined with provisions under title 14 of the General Statutes for the reporting of motor vehicle accidents, results in infringement upon the rights guaranteed under the fifth amendment to the United States constitution and article first, § 8, of the Connecticut constitution against self-incrimination.

Section 14-108, entitled "Report of accidents," directs that a motorist involved in an accident in which there is personal injury or property damage in excess of $400 file a written report of the circumstances of the accident within five days with the commissioner of motor vehicles. Information with regard to time, place, injuries, parties' names and addresses and operators' license numbers, identification of involved vehicles and damaged property, the cause of the accident and such further facts as the commissioner may require must be included in the report. Failure to file such a report may result in suspension of an operator's license and a fine. Section 14-116, entitled "Accident reports," states that the reports required by § 14-108 "shall . . . contain information to enable the commissioner to determine whether the requirements for the deposit of security under section 14-117 are inapplicable by reason of the existence of insurance or other exceptions specified in sections 14-113 to 14-133, inclusive."

Once a determination has been made that there

is no insurance, § 14-117 establishes the procedure for deciding the amount of security or the suspension of license and registration. Subsection (c) provides, however, that the section does not apply where there is insurance covering the accident. The commissioner has made provision for a uniform accident report form known as FR-1, and the bottom third of this form, called an SR-21 form, requests detailed insurance information, calling for a separate signature. The language at the top of form FR-1 states that "failure to report may result in the suspension of operator's license." The commissioner has also issued and is using a form SR-104 to notify police departments of uninsured owners for possible prosecution.

Thus, an uninsured motorist involved in a reportable accident must submit a signed statement as to whether or not he is insured and by failing fully to complete the FR-1 accident form he is subject to a fine and license suspension. By completing the FR-1 form and attesting that he is uninsured he thus furnishes the commissioner with a signed statement confessing his failure to carry the compulsory security and exposes himself to prosecution under § 38-327 (d). It is unclear whether the provisions with regard to security under title 14 are necessary in light of § 38-327, despite § 38-350. The quoted provisions of title 14, on their face and in their prior application, do not offend any constitutional provision. *Dempsey* v. *Tynan*, 143 Conn. 202, 120 A.2d 700. Similarly, the criminal sanctions of § 38-327 (d), deemed necessary by the legislature to enforce the mandatory security requirements of the act, are, on their face and in their separate application, constitutionally sound. However, insofar as § 14-108 requires a motorist to submit a signed statement of

his failure to carry insurance and § 38-327 (d) punishes such failure, criminal prosecutions for violations of § 38-327, when grounded upon the admissions contained in the FR-1 form, are constitutionally impermissible, for it is patent that the compelled disclosures would confront the reporter with substantial hazards of self-incrimination. *California* v. *Byers*, 402 U.S. 424, 429, 91 S. Ct. 1535, 29 L. Ed. 2d 9; *Marchetti* v. *United States*, 390 U.S. 39, 88 S. Ct. 697, 19 L. Ed. 2d 889. This is not to say that an uninsured motorist may not be subjected to prosecution under § 38-327 (d), nor that he is immunized by signing the FR-1 form, but rather that prosecution for this offense may not utilize the mandated statement of uninsurance required by § 14-108 and form FR-1. The burden of proof in such prosecution, as in all others, rests upon the commissioner and the state. The FR-1 report, filed as an administrative aid, may not be employed in the investigation or prosecution of an individual under § 38-327 (d); and it may well be advisable for the legislature to consider the duplicity of purpose and function of the security provisions of the no-fault act and those of title 14.

Conclusion

We have treated the issues as briefed by the parties. Justice dispensed in the abstract cannot be said to be perpetually sound and we have attempted to dispose only of those issues foreseeable at the present time, being ever mindful of the oft repeated principles which must govern our decision in a case such as this. What we said in *Kellems* v. *Brown*, 163 Conn. 478, 483, 313 A.2d 53, bears repeating: "'[A] plaintiff, in challenging the constitutionality of a statute, must sustain the burden of proving that the effect or impact of the challenged statute on him adversely affects a constitutionally

protected right which he has. "This means a right which he proves that he has under the facts of his particular case and not merely under some possible or hypothetical set of facts not proven to exist." *Hardware Mutual Casualty Co.* v. *Premo* . . . [153 Conn. 465, 471, 217 A.2d 698].' *Adams* v. *Rubinow,* 157 Conn. 150, 152, 251 A.2d 49." Again quoting from *Adams* v. *Rubinow* we also repeated in *Kellems* v. *Brown,* supra, 486: "It is well settled that a plaintiff who attacks a statute on constitutional grounds has no easy burden. As this court said in *Adams* v. *Rubinow,* . . . 'Because of the separation of powers, one claiming that a legislative enactment is invalid on the ground that it is unconstitutional must establish its invalidity on that ground beyond a reasonable doubt.'" We do not mean to foreclose further judicial discussion of the act in areas where it has not been appropriate for this court to discourse.

Individual rights and remedies must at times and of necessity give way to the interests and needs of society. If the law is to continue on the path of homogeneity to be the means of order in the complex social scheme of our growing populace, the legislature must be allowed to create alternate remedies for ills where the machinery of justice is so burdened that justice is, in fact, denied to many. We are in an age of the nascence of a new form of government, which might best be labeled an "administocracy" — rule by administrative agencies. Even the legislative branch of government, both state and federal, must so delegate many of its tasks or fail to provide the people all that their government should. It is no different with the judiciary. No longer may we align with the ancient civil law premise that recourse to the courts is the primary or *only* alternative to force for redress of injuries. We must recognize today the power of the legislature

to aid the process of justice with reasonable alternate remedies, and, no less may we do if our courts are to remain open to those suffering grievous wrongs and the legal process is to remain untethered and vital.

No sufficient purpose would be served by giving specific answers to the several questions presented in the reservation. We advise that on the facts as stipulated by the parties, we do not find the act under consideration to be unconstitutional.

No costs will be taxed in this court in favor of any party.

In this opinion the other judges concurred.

STATE OF CONNECTICUT

No. 7666

Louis A. Gentile, et al

vs.

Paul B. Altermatt, et al

Supreme Court

At Hartford

First Tuesday of
April , 1975.

JUDGMENT

This reservation for advice by the Court of Common Pleas for Hartford County upon certain questions listed in a stipulation executed by the parties was filed with the Clerk of said Court on the 12th day of July, 1974, and said reservation came thence to this Court at its term held at Hartford on the first Tuesday of October, 1974, and thence to the present term when the parties appeared and were fully heard.

And now this Court finds that on the facts as stipulated by the parties, the Act under consideration is not unconstitutional.

Whereupon it is adjudged that said act under consideration as stipulated by the parties is not unconstitutional, and that no costs be taxed in favor of any party.

Date of Judgment: August 5, 1975.

By the Court,

Patricia Friedle

Assistant Clerk.

Decision Announced: August 5, 1975.

APPENDIX B

The Connecticut Constitution and Statutes Involved

(A) Constitutional Provisions

ARTICLE I
DECLARATION OF RIGHTS

Sec. 1. Equality of rights

All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community.

Sec. 10. Right of redress for injuries

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

Sec. 19. Trial by Jury

The right of trial by jury shall remain inviolate.

(B) Statutory Provisions

38-323. Cause of action allowable, when
(Volume VII, Page 397)

(a) No cause of action to recover economic loss or non-economic detriment based on negligence arising out of the ownership, maintenance or use of a private passenger motor vehicle may be maintained against an owner, registrant, operator or occupant of a private passenger motor vehicle with respect to which security has been provided as required by this chapter, or against any person or organization legally responsible for his acts or omissions, unless the injured party has sustained

(1) death,

(2) permanent injury,
(3) fracture of any bone,
(4) permanent significant disfigurement,
(5) permanent loss of any bodily function,
(6) loss of a body member or
(7) allowable expense as defined in section 38-319 in excess of four hundred dollars.

Any person who receives free medical, hospitalization and surgical care shall be deemed to meet the requirement of subdivision (7) if the reasonable value of such care exceeds four hundred dollars.

(b) The exemption under subsection (a) of a person from liability to pay damages for injury applies only with respect to injury to

(1) owners of private passenger motor vehicles with respect to which security is required under this chapter,

(2) persons entitled to basic reparations benefits from any such owner or his insurer or through the assigned claims plan, and

(3) persons who would be entitled to such benefits but for section 38-331 or 38-332.

38-327. Mandatory security requirements
(Volume VII, Pages 398, 399)

(a) The owner of a private passenger motor vehicle required to be registered in this state shall provide and continuously maintain throughout the registration period security in accordance with this chapter for payment of basic reparations benefits and the liabilities covered under residual liability insurance. The owner of a private passenger motor vehicle not required to be registered in this state shall maintain such security in effect continuously throughout the period of its operation, maintenance or use as a motor vehicle within this state with

respect to accidents occurring in this state.

(b) The security required by this chapter may be provided by a policy of insurance complying with this chapter issued by or on behalf of an insurer authorized to transact business in this state or, if the vehicle is registered in another state, by a policy of insurance issued by or on behalf of an insurer authorized to transact business in either this state or the state in which the vehicle is registered.

(c) Subject to approval of the insurance commissioner the security required by this chapter may be provided by self-insurance by filing with the commissioner in satisfactory form:

(1) A continuing undertaking by the owner or other appropriate person to pay basic reparations benefits and the liabilities covered by residual liability insurance and to perform all other obligations imposed by this chapter;

(2) evidence that appropriate provision exists for the prompt and efficient administration of all claims, benefits, and obligations provided by this chapter; and

(3) evidence that reliable financial arrangements, deposits or commitments exist providing assurance for payment of basic reparations benefits and the liabilities covered by residual liability insurance and all other obligations imposed by this chapter substantially equivalent to those afforded by a policy of insurance that would comply with this chapter. A person who provides security under this subsection is a self-insurer.

(d) The owner of any private passenger motor vehicle required to be registered in this state who operates it or permits it to be operated in this state is guilty of a class C misdemeanor if he fails to provide the security

required by this chapter and shall further be required to provide the proof of financial responsibility required under section 14-112.

(e) An owner of a private passenger motor vehicle with respect to which security is required who fails to have such security in effect at the time of an accident shall be personally liable for the payment of basic reparations benefits. Such an owner shall have all of the rights and obligations of an insurer under this chapter and shall remain subject to all the obligations of the Financial Responsibility Law, sections 14-112 to 14-144.

(f) Upon receipt of a signed written request for suspension from the owner of a registered motor vehicle stating that such vehicle will not be operated upon any highway during a period of not less than thirty consecutive days, the insurer of such vehicle shall suspend, to the extent requested by the owner, insurance coverage afforded under the policy providing the security required by chapter 690 for such vehicle until notified by the owner that the coverage should be reinstated. During the period of suspension only, the provisions of subsections (a) to (e), inclusive, of this section and the provisions of section 38-328 shall not apply with respect to such vehicle, provided, if such vehicle is operated upon any highway by or with the permission of the owner during the period of suspension, the provisions of said subsections (a) to (e), inclusive, of this section, but not the provisions of section 38-328, shall thereupon become applicable. As used in this subsection "highway" shall be defined as in section 14-1. This subsection shall not apply to a motor vehicle for which proof of financial responsibility is required under the provisions of sections 14-112 to 14-133, inclusive.

14-108. Report of accidents
(Volume III, Page 550)

Any operator, whether resident or nonresident, of any motor vehicle or any road roller involved in an accident on a highway in this state or in an off-street parking area offered for public use with or without payment of a fee in which any person is killed or injured, or in which damage to the property of any one person, including the operator, in excess of four hundred dollars is sustained, shall, within five days thereafter, make a written report of the circumstances thereof to the commissioner and shall supplement such report by a detailed statement, on forms of the type prescribed in section 14-108a and provided by the commissioner, which report shall state as accurately as possible the time, place and cause of such accident, the injuries occasioned thereby and such further facts as the commissioner may require. The commissioner may require such report from the owner of such motor vehicle, and may make such investigation of such accident as seems to him advisable, and for such purpose he may require the assistance of the state police. The commissioner shall take such action as may be necessary to enforce a strict compliance with the provisions of this section, and shall report any failure to make any such report to a prosecuting officer having jurisdiction in the town in which the accident occurred. Any person who fails to report any such accident to said commissioner as required by the provisions of this section shall be fined not more than fifty dollars.

14-112. Proof of financial responsibility on violation of certain statutes

(Volume III, Pages 555, 556)

(a) When required

(a) To entitle any person to receive or retain a motor vehicle operator's license or a certificate of registration of any motor vehicle when, in the opinion of the commissioner, such person has violated any of the provisions of the following-named sections and subsections: Section 14-44, subsection (a) or (b) of section 14-80, sections 14-110, 14-147, 14-217, 14-219, 14-222, 14-224, subsection (a) of section 14-227a, sections 14-228, 14-229, 14-275 to 14-281, inclusive, or subsection (a)(1) of section 53a-123 or any similar provision of the laws of any other state or any territory, or who has been convicted of, or has forfeited any bond taken for appearance for, or has received a suspended judgment or sentence for, a violation of any of said provisions, or a violation of any of the provisions of sections 14-230 to 14-247, inclusive, and 38-327, within a twelve-month period following a violation of any of said sections, or who has been held or found criminally responsible in connection with any motor vehicle accident resulting in the death of any person, or who has a record on file with the commissioner which is sufficient, in the opinion of the commissioner, to require evidence of financial responsibility for the reasonable protection of other persons, the commissioner shall require from such person proof of financial responsibility to satisfy any claim for damages by reason of personal injury to, or the death of, any one person, twenty thousand dollars, or by reason of personal injury to, or the death of, more than one person on account of any accident, of at least forty thousand dollars, and for damage to property of at least five

thousand dollars, except that, for violations of subsection (a) or (b) of section 14-80, section 14-147, 14-219, 14-222, 14-224 if there is no personal injury and the property damage is under two hundred dollars, or 14-275 to 14-281, inclusive, or a violation of any of the provisions of sections 14-230 to 14-247, inclusive, and 38-327, within a twelve-month period following a violation of any of said sections, or a violation of section 14-217 or 14-228, the commissioner may, in his discretion, waive such requirements. When the commissioner requires proof of financial responsibility from an operator of or from the owner of any motor vehicle, he may require proof in the amounts herein specified for each vehicle operated or owned by such person. If any person fails to furnish such proof, the commissioner shall, until such proof is furnished, suspend or revoke the license of such person to operate a motor vehicle or refuse to return any license which has been suspended or revoked in accordance with the provisions of section 14-111 or suspend or revoke the registration of any such motor vehicle or vehicles or refuse thereafter to register any motor vehicle owned by such person or refuse to register any motor vehicle transferred by him if it does not appear to the commissioner's satisfaction that such transfer is a bona fide sale, or, if such person is not a resident of this state, withdraw from such person the privilege of operating any motor vehicle in this state and the privilege of operation within this state of any motor vehicle owned by him. Prior to such suspension, revocation or withdrawal, notice thereof shall be given by the commissioner by a notice forwarded by registered or certified mail to the address of such person as shown by the records of the commissioner. No appeal taken from the judgment of any court shall act as a stay to any

action of the commissioner authorized by the provisions of this section.

14-116. Accident reports
(Volume III, Page 560)

The report required under section 14-108 shall, as to any accident within this state in which any person is killed or injured or in which damage to the property of any one person, including the operator so reporting, in excess of four hundred dollars is sustained, contain information to enable the commissioner to determine whether the requirements for the deposit of security under section 14-117, are inapplicable by reason of the existence of insurance or other exceptions specified in sections 14-113 to 14-133, inclusive. The commissioner may rely upon the accuracy of the information unless he has reason to believe that the information is erroneous. If such operator is physically incapable of making such report, the owner of the motor vehicle involved in such accident shall, within ten days after learning of the accident, make such report. The operator or the owner shall furnish such additional relevant information as the commissioner requires.

APPENDIX C

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Louis A. Gentile, Rosemary Boyajian, William LeFort, Catherine Pagonis and Stilianos Karidas, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Connecticut, affirming the dismissal of the complaint and, on the reservation of questions, finding the act under consideration to be constitutional, entered in this action on August 5, 1975.

This appeal is taken pursuant to 28 U. S. C. 1257 (2).

Harold J. Geragosian
Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 1975, copies of this notice of appeal to the Supreme Court of the United States were mailed, postage prepaid, to Carl Ajello, Esq., Attorney General of the State of Connecticut, Barney Lapp, Esq., Assistant Attorney General, and Ralph G. Elliot, Esq., of Alcorn, Bakewell and Smith, all of Hartford, Connecticut. I further certify that all parties required to be served have been served.

Harold J. Geragosian
Counsel for Appellants

FILED
SEP 26 4:00 PM '75
SUPERIOR COURT
HARTFORD COUNTY
OFFICE OF CLERK

Supreme Court, U. S.
FILED
NOV 28 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-639

LOUIS A. GENTILE, ET ALS.,

Appellants,

v.

PAUL B. ALTERMATT, ET ALS.,

Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF CONNECTICUT

MOTION TO AFFIRM OR, IN THE ALTERNATIVE, TO DISMISS

RALPH G. ELLIOT
One American Row
Hartford, Connecticut 06103
Counsel for Appellees
Aetna Casualty & Surety Company, et al.

TABLE OF CONTENTS

	PAGE
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statutory Provisions Involved	2
Argument	3
A. The Attack on § 38-323	3
B. The Attack on § 38-327	13
C. The Attack on § 14-112	15
Conclusion	16

TABLE OF AUTHORITIES CITED

Cases:

Bartolotta v. *United States*, 276 F. Supp. 66 (D. Conn; 1967), affirmed, 411 F. 2d 115 (1969)	13
Grace v. *Howlett*, 51 Ill. 2d 478, 283 N.E. 2d 474	10
Lasky v. *State Farm Insurance Company*, 296 So. 2d 9 (1974)	10
Manzanares v. *Bell*, 214 Kan. 589, 522 P. 2d 1291 (1974)	10
McDonald v. *Board of Election Commissioners*, 394 U.S. 802 (1969)	7
New York Central Railroad Company v. *White*, 243 U.S. 188 (1917)	11

PAGE

Opinion of the Justices, 113 N.H. 205, 304 A. 2d 881 (1973) 10

Pinnick v. *Cleary*, 360 Mass. 1, 271 N.E. 2d 592 (1971) 10

Powers v. *Hotel Bond Company*, 89 Conn. 143, 93 A. 245 (1915) 11

Silver v. *Silver*, 280 U.S. 117 (1929) 5

Statutes:

Connecticut General Statutes (1958 Rev.)

§ 14-108 3

§ 14-112 .....2, 3, 15, 16

§ 14-116 3

§ 14-130 14

§ 31-275 .....11, 12

§ 31-284 11

§§ 38-319–38-351a 2, 3, 4, 10, 13, 14, 15, 16

Rules:

Supreme Court Rules 16(1)(b), (c) and (d) 1, 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-639

LOUIS A. GENTILE, et als.,

Appellants,

v.

PAUL B. ALTERMATT, et als.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO AFFIRM OR, IN THE ALTERNATIVE, TO DISMISS

Appellees The Aetna Casualty and Surety Company, Allstate Insurance Company, Covenant Insurance Company, Hartford Accident and Indemnity Company, Liberty Mutual Fire Insurance Company, Lumbermen's Mutual Casualty Company, Nationwide Mutual Insurance Company and The Travelers Indemnity Company pursuant to Rule 16(1)(c) and (d) of the Rules of the Supreme Court of the United States move that the final judgment of the Supreme Court of Connecticut be affirmed on the grounds that the questions on which the decision of the cause de-

pends are so unsubstantial as not to need further argument and that the decision of the Supreme Court of Connecticut is so obviously correct under principles of law heretofore enunciated by this Court that no further review by this Court is warranted. In the alternative, said appellees pursuant to Rule 16(1)(b) move that the appeal from said judgment be dismissed on the grounds that it does not present a substantial federal question and that the judgment rests on an adequate non-federal basis.

Opinion Below

The memorandum opinion and judgment of the Supreme Court of Connecticut are set forth in the Appendix of appellant's Jurisdictional Statement (hereinafter "Appendix").

Jurisdiction

The jurisdiction of this Court has been invoked by appellants under 28 U.S.C. § 1257(2).

Questions Presented

Whether Connecticut General Statutes §§ 38-323, 38-327(a), (d), and (e), and 14-112 violate the equal protection and due process guarantees of the 14th amendment of the United States Constitution, and, so far as § 14-112 is concerned, the Fifth Amendment guarantees against self-incrimination as well.

Statutory Provisions Involved

The statute under consideration is 1972 Public Act No. 273, now codified as Connecticut General Statutes Chapter 690, §§ 38-319 through 38-351a. This statute is fully

analyzed and summarized in the opinion of the Supreme Court of Connecticut set forth in appellant's Appendix. Within that statute appellant attacks only § 38-323, and § 38-327(a), (d), and (e). In addition, appellant purports to attack Connecticut General Statutes § 14-112, when read in conjunction with § 38-327(d), § 14-108 and § 14-116. These specific sections are set forth in Appendix B of appellant's Jurisdictional Statement.

Argument

A. The attack on § 38-323

On its face, appellant's Jurisdictional Statement discloses that the heart of its challenge to Connecticut's no-fault automobile reparations law is grounded on *state* constitutional principles, *not federal* constitutional guarantees, and that those state constitutional principles have been found by Connecticut's Supreme Court amply to support the statute in question. As the Court below noted in its opinion, the fact that there existed in the State of Connecticut a cause of action in negligence by victims of automobile accidents is an historical outgrowth of two uniquely state factors: (1) the fact that early in the development of Connecticut's system of jurisprudence it adopted from the English common law the action of trespass on the case which, the Court below held, was the foundation of the automobile accident victim's cause of action, and (2) the fact that when Connecticut adopted its first constitution in 1818, that state constitution recognized all existing rights—including the action for trespass on the case—and permitted the legislature to restrict or abolish those rights only on providing reasonable alternatives to the enforcement of those rights (Appendix, pages 16A-19A). The Court below went on to find a reasonable alternative to this cause of action to have been provided by the no-fault statute in question.

Appellants themselves recognize that the source of their claimed cause of action for automobile accident victims derives, if at all, from the Connecticut *state* constitution rather than from the federal (cf. Jurisdictional Statement, page 3, question no. 4 and page 7). Likewise, appellants recognize that their right, if any, to a jury trial on that cause of action derives from provisions of the Connecticut *state* constitution, rather than from the federal (cf. Jurisdictional Statement page 14, last paragraph). And as Connecticut's highest court has interpreted Connecticut's constitutional provision, that right to a jury trial has not been abridged by this statute, since those entitled to maintain the cause of action are still entitled to trial by jury. All the statute was held to have done was to restrict the standing to institute the action to those who had not received the benefits of the reasonable alternative to that action—no-fault insurance—provided by the legislature (Appendix, pages 30A-31A). Thus, to the extent that appellants ground their objections to § 38-323 on the claimed abolition of a constitutionally-guaranteed right either to a cause of action or to a jury trial, appellants concede and appellees agree that the constitution that guaranteed those rights was Connecticut's *state* constitution, and Connecticut's highest court has found those guarantees not to be violated by the statute in question.

Appellants complain that victims of private passenger motor vehicle accidents are by virtue of the statute treated differently from victims of other tortious acts, allegedly in violation of the due process and equal protection clauses of the Fourteenth Amendment. Treating different types of problems in different ways is a legitimate exercise of the legislative power, however. And this Court, in upholding Connecticut's automobile guest statute, as early as almost a half century ago clearly recognized that there are valid, legally cognizable differences between private passenger motor vehicles on the one hand and other types of motor vehicles—not to mention other types of non-motor vehicle

torts—on the other hand that make constitutionally permissible different legislative treatment of torts arising out of the use of private passenger motor vehicles. Its discussion in *Silver* v. *Silver*, 280 U.S. 117, 122-124 (1929), bears extended quotation here because of its almost prescient pertinence to the no-fault statute under consideration in the case at bar:

> As the record does not disclose the constitutional grounds on which the appellant challenged the validity of the statute, our review will be limited to the single question arising under the Federal Constitution which was considered in the opinion of the court below. *Saltonstall* v. *Saltonstall*, 276 U.S. 260. We need not, therefore, elaborate the rule that the Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object. See *Louis Pizitz Dry Goods Co.* v. *Yeldell*, 274 U.S. 112, 116; *New York Central R. Co.* v. *White*, 243 U.S. 188; *Mountain Timber Co.* v. *Washington*, 243 U.S. 219; *Wilmington Mining Co.* v. *Fulton*, 205 U.S. 60, 74.
>
> The use of the automobile as an instrument of transportation is peculiarly the subject of regulation. We cannot assume that there are no evils to be corrected or permissible social objects to be gained by the present statute. We are not unaware of the increasing frequency of litigation in which passengers carried gratuitously in automobiles, often casual guests or licensees, have sought the recovery of large sums for injuries alleged to have been due to negligent operation. In some jurisdictions it has been judicially determined that a lower standard of care should be exacted where the carriage in any type of vehicle is gratuitous. See *Massaletti* v. *Fitzroy*, 228 Mass. 487; *Marcienowski* v. *Sanders*, 252 Mass. 65; *Epps* v. *Parrish*, 26 Ga. App. 399. Whether there has been a serious increase in the evils of vexatious litiga-

tion in this class of cases, where the carriage is by automobile, is for legislative determination and, if found, may well be the basis of legislative action further restricting the liability. Its wisdom is not the concern of courts.

It is said that the vice in the statute is not that it distinguishes between passengers who pay and those who do not, but between gratuitous passengers in automobiles and those in other classes of vehicles. But it is not so evident that no grounds exist for the distinction that we can say *a priori* that the classification is one forbidden as without basis, and arbitrary. See *Clarke* v. *Deckeback,* 274 U. S. 392, 297.

Granted that the liability to be imposed upon those who operate any kind of vehicle for the benefit of a mere guest or licensee is an appropriate subject of legislative restriction, there is no constitutional requirement that a regulation, in other respects permissible, must reach every class to which it might be applied—that the legislature must be held rigidly to the choice of regulating all or none. *Patsone* v. *Pennsylvania,* 232 U.S. 138, 144; *Miller* v. *Wilson,* 236 U.S. 373, 383, 384; *International Harvester Co.* v. *Missouri,* 234 U.S. 199, 215; *Barrett* v. *Indiana,* 229 U.S. 26, 29 (1913). In this day of almost universal highway transportation by motor car, we cannot say that abuses originating in the multiplicity of suits growing out of the gratuitous carriage of passengers in automobiles do not present so conspicuous an example of what the legislature may regard as an evil, as to justify legislation aimed at it, even though some abuses may not be hit. *Carroll* v. *Greenwich Ins. Co.,* 199, U.S. 401, 411; *Bryant* v. *Zimmerman,* 278 U.S. 63, 73. It is enough that the present statute strikes at the evil where it is felt and reaches the class of cases where it most frequently occurs.

Id., at 122-124

In so holding this Court was but applying the traditional principles of constitutional review of challenged state legislation stated by this Court recently again in *McDonald* v. *Board of Election Commissioners,* 394 U.S. 802, 808-809 (1969):

> Though the wide leeway allowed the States by the Fourteenth Amendment to enact legislation that appears to affect similarly situated people differently, and the presumption of statutory validity that adheres thereto, admit of no settled formula, some basic guidelines have been firmly fixed. The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal. Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them. See *McGowan* v. *Maryland,* 366 U.S. 420 (1961); *Kotch* v. *Board of River Port Pilot Commissioners,* 330 U. S. 552 (1947); *Lindsley* v. *Natural Carbonic Gas Company,* 220 U.S. 61 (1911). With this much discretion, a legislature traditionally has been allowed to take reform "one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind," *Williamson* v. *Lee Optical of Oklahoma, Inc.,* 348 U.S. 483, 489 (1955); and a legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked. See *Ozan Lumber Co.* v. *Union County National Bank,* 207 U.S. 251 (1907).

No topic of recent state legislative attention has been the subject of such searching scrutiny, such decades-long

study, such spirited debate, and such slow gestation as has the no-fault automobile reparations statute, both in Connecticut and in the other 25 or so states of the Union which have adopted such legislation in one form or another. From the earliest suggestions over 40 years ago at Columbia University, through years of study, through the seminal 1965 work by Professors Keeton and O'Connell, through the compendious multi-volume study conducted by the Federal Department of Transportation, through the extensive subsequent studies of the specially-created Connecticut Commission to Study a State Program of Restricted Motor Vehicle Insurance, through lengthy public and legislative hearings and debates, through the ultimate enactment and signing of 1972 Public Act No. 273—a history fully considered and discussed by the court below in its opinion (Appendix, pages 20A-23A)—the progress of this statute through the forum of public debate and the long legislative process has been a veritable model of American democracy—an informed, alert, fully-ventilating, robustly-debating American democracy—legislating social and economic legislation for the advancement of the common good. The wisdom or unwisdom of this legislation, no province of the courts, has been as fully debated and considered in the legislative halls and public forums designed by the Constitution for that purpose as has that of any legislation enacted in recent memory.

That history and process, coupled with the DOT study and State Commission reports which comprised stipulated exhibits in the record below and were before the Court for its consideration, were coupled with yet other facts before the Court, stipulated by the parties, for its consideration of the rationality of the legislature's different treatment of private passenger motor vehicle victims, and its decision at this time to afford to them alone the benefits of no-fault reparations benefits. These included the facts that in 1972 there were 1,441,633 private passenger motor vehicles—those covered by the Act—registered in Con-

necticut, as contrasted as to only 129,659 commercial vehicles and 208,935 "other vehicles" (the comparable figures for 1973 were 1,500,830; 129,464; and 225,436); and that at year-end 1972 there were 1,713,850 private passenger motor vehicle drivers' licenses in effect (the comparable figure for 1973 was 1,728,184); and that in 1971 there were 79,702 traffic accidents in Connecticut resulting in injury to 34,665 people and 490 traffic fatalities; and that the total number of persons whose motor vehicle licenses were under suspension as of February 27, 1974 was 85,149.

Thus, the Court below had before it telling, irrefutable evidence—evidence stipulated to by all the parties to this action—supporting the rationality at this time of treating private passenger motor vehicle accident victims differently from victims of other motor vehicle accidents and other tort victims, and of devising a means of affording them at this time prompt, certain, and full payment of all the costs incurred by them without the uncertainties of the adversary system in negligence actions, the law's delays of perhaps a half decade before trial, and the need during that extended period to bear all expenses out of their own pockets, with no guarantee that any part would ever be recovered or recoverable. For this is what the statute provided as an alternative—a reasonable alternative—to the previous remedy in tort for those with expenses under the $400 threshold *and* who have not suffered death, permanent injury, fracture of any bone, permanent significant disfigurement, permanent loss of any bodily function or loss of a body member.

Appellants decry that what they estimate to be 87% of all private passenger motor vehicle accident victims have lost the right to sue. The legislature—and, it is submitted, the victims—view the matter from a different perspective. For them, 87% of private passenger motor vehicle accident victims have been provided the *certainty* that medical care bills, loss of income and expenses incurred in obtaining ordinary and necessary substitute

services *will be paid* (§ 38-319), that they will be paid as these expenses and losses are incurred and usually no later than 15 days after proof of loss is submitted (§ 38-333), and that at a minimum these expenses will be paid up to $5,000 (§ 38-320), with an option that the limits on the available insurance may well be higher (§ 38-330). Thus, those with medical care expenses less than $400 in reasonable value and without the prescribed injuries are guaranteed that *without* the expense and delay and bother of instituting suit, and *without* incurring the burden of proving fault, and *without* the uncertainty as to whether a judge or jury will believe their story or the defendant's, and *without* the many years of litigation during which out-of-pocket expenses must be borne without reimbursement in the hope that someday some jury may believe their story or that the case may be settled on the courthouse steps for some sum of money (less costs and attorneys' fees)—without all of these expenses and delays and uncertainties and privations, they will be made whole for their economic loss automatically, immediately, as the loss is incurred, and up to a guaranteed minimum of $5,000. And this, the Court below has found and this Court should affirm, is clearly a reasonable alternative to, and a more than adequate substitute for, the right to sue in tort.

And so it has been found to be by the Supreme Courts of four states—*Lasky* v. *State Farm Insurance Company,* 296 So. 2d 9 (Florida); *Manzanares* v. *Bell,* 214 Kan. 589, 522 P. 2d 1291 (Kansas); *Pinnick* v. *Cleary,* 360 Mass. 1, 271 N.E. 2d 592 (Massachusetts); *Opinion of the Justices,* 113 N.H. 205, 304 A. 2d 881 (New Hampshire); and, as this brief is being printed, so has the New York Court of Appeals. Only in Illinois did the Supreme Court invalidate a no-fault statute. *Grace* v. *Howlett,* 51 Ill. 2d 478, 283 N.E. 2d 474. And it is significant that in *Grace,* the Illinois Supreme Court rested its decision not on the federal Constitution, but on two provisions of the Illinois *state* constitution unique to that constitution and found neither in the federal constitution nor in the Connecticut constitution.

Appellants urge this Court to ignore the analogy to workmen's compensation laws and their constitutionality, held by this Court in *New York Central Railroad Company* v. *White,* 243 U.S. 188 (1917) and cited with approval by the Court below and by all four state Supreme Courts upholding no-fault statutes. Appellants note, and claim significance for, the fact that the New York State Constitution had been amended to permit workmen's compensation legislation of the sort under consideration by this Court in *White.* That fact is, however, without significance in the case at bar where appellants claim the protection of *federal* constitutional guarantees. *White* found the workmen's compensation statute constitutional under the *federal* constitution, and it was irrelevant to that determination that it was also valid under the New York *state* constitution; indeed, had it not passed *state* constitutional muster, it doubtless would never have reached this Court on appeal by plaintiffs in the first place.

Appellants next seek to distinguish the incidents of workmen's compensation legislation from those of no-fault to show that *White* and its progeny do not afford the ample precedents for constitutionality that state Supreme Courts considering no-fault legislation have heretofore universally found in them. They claim that Connnecticut's Workmen's Compensation Act is elective, rather than mandatory, and rely for that proposition on the Connecticut Supreme Court decision in *Powers* v. *Hotel Bond Company,* 89 Conn. 143, 93 A. 245 (1915). Despite the fact that appellants seek to tie that case to the *current* definitions section of Connecticut's Workmen's Compensation statute, General Statutes § 31-275, the simple fact of the matter is that *Powers* was considering the original 1913 version of the Act, and the Act has been considerably changed since then. The current provision of Connecticut's Workmen's Compensation Act, General Statutes § 31-284, is *mandatory* and requires the employer to secure compensation to employees covered by the Act. Each employer who does not

furnish to the Compensation Commissioner satisfactory proof of his solvency and financial ability to pay back directly to injured employees or other beneficiaries the compensation provided by the Act must insure his full liability in one of the following ways: (1) by filing with the Insurance Commissioner security guaranteeing the performance by the employer of his obligations under the Act; or (2) by insuring his full liability under the Act in stock or mutual companies or associations authorized to take such risks in Connecticut; or (3) by such a combination of the two aforesaid methods as the employer may choose subject to the approval of the Insurance Commissioner. Furthermore, the Act abolishes all rights and claims between the employer on the one hand and the employee or any representative or dependents of the employee on the other hand arising out of personal injury or death sustained in the course of employment. While the act does permit the employee and employer to agree to substitute security, that substitute security must itself be approved by the Insurance Commissioner and must be at least equivalent to the benefits provided by the Workmen's Compensation law. Indeed, under the statute cited by appellants, § 31-275, the only persons as to whom this statute is elective and the only situation in which there is a full option to withdraw is in the case of employers and employees "excluded from the definition of employee" under the Act; and even in these situations, the statute provides that "all contracts of employment between an employer employing persons excluded from the definition of employee and any such employee shall be conclusively presumed" to contemplate the possibiilty of coverage at the option of the employer. As to employers and all employees as defined under the Act, they are bound by its terms and may not withdraw or elect to retain their common law rights.

In effect, then, the Connecticut statute and similar acts of other states deprive covered employees of the right

to sue their employers for common law negligence, while at the same time and in consideration for that deprivation guaranteeing them certain statutory sums from their employers in cases of personal injury arising out of and in the course of employment. Thus, the Connecticut statute and similar acts in other states limit the amounts recoverable to lesser sums than an employee might recover at common law, but make such amounts payable in every instance of work-connected injury, rather than in just those instances where an employee can prove breach of common law duty. *Bartolotta* v. *United States,* 276 F. Supp. 66 (D. Conn; 1967), affirmed, 411 F. 2d 115 (1969).

Thus it is that Connecticut's no-fault statute, like that of the other states adopting these statutes, closely parallel provisions long found constitutional in workmen's compensation statutes throughout the United States, both secure to injured parties certain, prompt and adequate compensation for injuries without the need to prove fault, both acts are mandatory, and both acts properly serve the remedial purposes for which they were enacted.

B. The attack on § 38-327

Appellants' attack on § 38-327(a) misstates the provisions of that section. Nowhere in that section—or in the statute itself—is there a requirement that private passenger motor vehicle owners purchase security from private insurance companies. The parties themselves stipulated, and the Court below so found (Appendix, pages 36A-37A), that owners are permitted under the statute to self-insure. Likewise, even if there were such a requirement, that requirement standing alone would not suffice to render the statute unconstitutional. Appellants argue that the insurance companies—presumably all 187 competitive insurance companies doing business in Connecticut—sell insurance pursuant to unregulated underwriting standards; and at page 15 of their Jurisdictional Statement

they allege that *these standards* violate the federal constitution. Putting aside the fact that the standards are not state statutes or governmental regulations or orders, the fact is (as found by the Court below, Appendix pages 35A-36A) that even prior to the enactment of the no-fault statute, the Connecticut legislature had established a medium for administrative and judicial review whereby any potential insured who feels himself aggrieved by the rates or underwriting policies of any insurer can secure a review of that claim by the company, by the insurance commissioner, and ultimately by the courts themselves. General Statutes § 38-208p.

And finally, again as the Court below found (Appendix, page 36A), anyone who is unable to purchase insurance from one of the 187 companies is guaranteed under state law the availability of the required insurance under Connecticut's assigned risk plan, known as the Connecticut Automobile Insurance Plan, established pursuant to General Statutes § 14-130, which requires each of the 187 insurance companies, in proportion to their automobile insurance writings in Connecticut, to insure the small number of applicants who are considered to be unreasonably high risk applicants. Indeed, the availability of insurance to all applicants through this plan is itself documented in the DOT study of assigned risk plans which specifically notes that Connecticut is one of only nine states whose assigned risk plans guarantee coverage to every licensed driver who continues to pay the premiums. The presence of the Insurance Commissioner of Connecticut as an ex officio member of the governing board of the Connecticut Automobile Insurance Plan further demonstrates the state's commitment to assure the availability of insurance at reasonable rates for all licensed applicants.

Likewise, appellants' attacks on §§ 38-327(d) and (e) are without foundation. Appellants complain as to (d) that only on private passenger motor vehicle owners are

criminal and administrative penalties and sanctions imposed for failure to provide security under the Act. Appellants do not complain about the amount or severity of those sanctions and penalties, but only about the fact that they are not imposed on non-private passenger motor vehicle owners. Since non-private passenger motor vehicle owners are *not* required to provide security under the Act, however, it would probably violate *their* federally guaranteed rights if they *were* subject to penalties and sanctions for failing so to provide. § 38-327(d) is a constitutionally legitimate provision to ensure compliance with the mandatory security provisions of the Act.

The imposition of personal liability up to $5,000 on private passenger motor vehicle owners who violate their statutory duty to provide basic reparations security as required by § 38-327(e) does no more than prevent an owner from escaping his responsibility under the Act. Under § 38-320 (see Appendix, page 5A), the basic reparations benefits the no-fault security must provide at a minimum is $5,000 per person payable to an injured person or, in the case of his death, to his survivors. Section 38-327(e) places the same responsibility, in the same and no higher amount, on each owner who fails to provide that benefit through the contemplated purchased security. If the Act's requirement that security be provided is constitutional, then the safeguard of § 38-327(e) is equally valid.

C. The attack on § 14-112

Finally, plaintiffs complain that § 38-327(d), which imposes criminal sanctions for failure to carry the required security, when combined with provisions under title 14 of the General Statutes for the reporting of motor vehicle accidents, results in infringement upon the rights guaranteed under the Fifth Amendment to the United States Constitution. The Supreme Court of Connecticut, however, in the opinion below, has clearly proscribed the use of

any signed statement by a motorist concerning his failure to carry the required security in either the investigation or prosecution of an individual under § 38-327(d) for failure to carry that security. Thus, the coexistence of §§ 14-108, 14-116, and 38-327(d) cannot offend the self-incrimination provisions of the Fifth Amendment. How § 14-112—which is the statute claimed in question no. 8 (Jurisdictional Statement, page 3) to offend the Fifth and Fourteenth Amendments—is constitutionally infirm is impossible to discern, because neither in their Jurisdictional Statement nor in the Court below have appellants adverted to it again. For their part, appellees are unable to detect even the suspicion of a constitutional question.

Conclusion

The discussion above clearly discloses that the opinion and judgment of the Supreme Court of Connecticut are amply supported by principles heretofore enunciated by this Court, that the appeal presents no substantial federal question, and that the judgment rests on an adequate non-federal basis.

Accordingly, the judgment below should be affirmed; or, in the alternative, the appeal should be dismissed.

Respectfully submitted,

RALPH G. ELLIOT
Counsel for Appellees,
Aetna Casualty & Surety Company, et al.

Supreme Court, U. S.
FILED
NOV 28 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-639

LOUIS A. GENTILE ET AL., APPELLANTS

v.

PAUL B. ALTERMATT, ET AL., APPELLEES

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS OR AFFIRM PURSUANT TO RULE 16 OF THE REVISED RULES OF THE SUPREME COURT

CARL R. AJELLO
Attorney General

BARNEY LAPP
Assistant Attorney General

DANIEL R. SCHAEFER
Assistant Attorney General

Attorneys for Appellees,
Defendant State Officials

November 24, 1975

LEDGER PRESS, PRINTERS, HARTFORD

INDEX

Page

MOTION TO DISMISS OR AFFIRM PURSUANT TO RULE 16 OF THE REVISED RULES OF THE SUPREME COURT 1

STATEMENT OF THE CASE 2

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND SHOULD BE DISMISSED OR THE JUDGMENT AFFIRMED FOR REASONS STATED IN THE MOTION 3

A. REASONABLE ALTERNATIVES TO EXISTING COMMON LAW CAUSES AND FORMS OF ACTION 3

B. NO EQUAL PROTECTION VIOLATION 10

C. JURY TRIAL 12

D. MANDATORY SECURITY 13

E. FIFTH AMENDMENT CONSIDERATIONS .. 16

CONCLUSION 16

CERTIFICATE OF SERVICE 17

TABLE OF CITATIONS

CASES: *Page*

Jacobs v. *Swift & Co.*, 141 Conn. 276, 279 (1954) 6

Lochner v. *New York*, 198 U.S. 45 (1905) 9

Louisville Gas & Electric Co. v. *Coleman*, 277 U.S. 32, 41 (1928) 10

McDonald v. *Board of Election Commissioners*, 394 U.S. 802, 808-809 (1969) 11

Metropolis Theatre Co. v. *Chicago*, 228 U.S. 61, 69-70 (1913) 11

Mountain Timber Co. v. *Washington*, 243 U.S. 219, 235 (1916) 13-14

Munn v. *Illinois*, 94 U.S. 113, 134 (1871) 4

New York Central R.R. Co. v. *White*, 243 U.S. 188 (1916) 6-14

Pinnick v. *Cleary*, 360 Mass. 1, 271 N.E. 2d 592 (1971) 5

Reed v. *Reed*, 404 U.S. 71 (1971) 10

Verilli v. *Damilowski*, 140 Conn. 358, 360 (1953) 5

COURT RULES, STATUTES AND CONSTITUTIONAL PROVISIONS:

Rule 16, Revised Rules of the Supreme Court 1

Article First, § 10, *Connecticut Constitution* 3

Public Act 273 (1972) codified as §§ 38-319 through 38-351a, General Statutes inclusive 2

Page

P.A. 90-313 2

1971 Special Act No. 143 2

TEXTS:

Wright and Fitzgerald, *Connecticut Law of Torts* (2d ed. 1968) 6

GOVERNMENTAL STUDIES:

Motor Vehicle Crash Losses and Their Compensation in the United States 2

Report of the Commission to Study a State Program of Restricted Motor Vehicle Insurance 2

United State Department of Transportation Automobile Insurance and Compensation Study 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-639

LOUIS A. GENTILE ET AL., APPELLANTS

v.

PAUL B. ALTERMATT, ET AL., APPELLEES

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS OR AFFIRM PURSUANT TO RULE 16 OF THE REVISED RULES OF THE SUPREME COURT

The Appellees, who are the Insurance Commissioner of the State of Connecticut and other state officials,[1] respectfully move, pursuant to Rule 16 of the Revised Rules of the Supreme Court, to dismiss the appeal and, in the alternative, to affirm the judgment below on the grounds that: (a) it does not present a substantial federal question; (b) it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument; and (c) the issues concerning "no fault" insurance for motor vehicle accidents and the statutory revisions of the law of negligence, center largely around an interpretation of the Constitution of

[1]The original defendant-appellees represented by the Attorney General's office were Paul B. Altermatt, Insurance Commissioner; Robert I. Berdon, State Treasurer; Nathan G. Agostinelli, State Comptroller; and Adolf G. Carlson, Commissioner of Finance and Control. These individuals have all since been replaced.

the State of Connecticut, Article First, § 10, with the Federal constitutional provisions only secondarily involved.

STATEMENT OF THE CASE

This is an appeal from the decision of the Supreme Court of the State of Connecticut sustaining the constitutionality of the state No-Fault Motor Vehicle Insurance Act, 1972 Public Acts, No. 273.[2] A declaratory judgment was rendered accordingly. The Act was based upon numerous legislative and administrative studies of both the federal and state governments as well as the private sector, including the *United States Department of Transportation Automobile Insurance and Compensation Study,* commissioned by Public Act 90-313, summarized in *Motor Vehicle Crash Losses and Their Compensation in the United States,* A Report to Congress and the President, March 1971 (Stipulation Exhibit G) and the Connecticut *Report of the Commission to Study a State Program of Restricted Motor Vehicle Insurance,* commissioned by 1971 Connecticut Special Act No. 143 (Stipulation Exhibit E). The state commission included the Insurance Commissioner, Motor Vehicles Commissioner, members of the Judiciary and Insurance Committees of the State Senate and House of Representatives, members of the Bar, individual legislators of both parties, experts from the field of insurance and representatives from the general public.

In summary, the Act provides that benefits are to be paid, without regard to fault, and without the necessity of filing a law suit, for certain personal injuries and economic loss suffered as a result of automobile accidents. In return, owners of private automobiles must provide security for these payments as well as residual liability. Civil actions are retained for cases where the insured suffers death, permanent injury, fracture of any

[2]Since codified as §§ 38-319 through 38-351a, General Statutes, inclusive, hereinafter referred to as "the Act."

bone, permanent significant disfigurement, permanent loss of any bodily function, or allowable expense in excess of $400.

The balance of the proceedings and remaining background in this case are adequately set forth in the opinion of the State Supreme Court, Jurisdictional Statement, pp. 1A-41A, as well as the brief of the co-defendant-appellees, and will not be repeated.

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND SHOULD BE DISMISSED OR THE JUDGMENT AFFIRMED FOR REASONS STATED IN THE MOTION.

This case involves essentially an interpretation of the State Constitution, Article First, § 10, and the statutory revisions of the law of negligence contained in the Act. The thrust of the appellants' attack in the court below was on state constitutional and common law grounds. Federal constitutional provisions were only indirectly involved. Furthermore, the decision of the State Supreme Court is correct on its face and fails to disclose any substantial federal question so as to justify plenary consideration by this Court. This is abundantly clear from even a quick review of the issues. These concern reasonable alternatives to the common law cause of action, different treatment of different classes, mandatory security and the accident reporting requirements. We will discuss these points briefly.

A. REASONABLE ALTERNATIVES TO EXISTING COMMON LAW CAUSES AND FORMS OF ACTION.

The appellants strenuously object to those portions of the Act which limit the need to pursue an independent civil action in order to recover general and special damages where medical expenses are less than $400. Their argument overlooks the fundamental object of government. A government involves a social compact by which the people covenant with each other that all shall be governed by certain laws for the common good. It

is an inherent attribute of any sovereign government to enact those laws necessary to that end. And with the power to enact laws is the concomitant power to revise and alter them as deemed necessary from time to time. No group, no matter how well organized or vocal, has a right to demand that a certain rule be immutably preserved in cold storage for perpetuity. Rules are not guaranteed eternal existence for no better reason than they may bear the imprimatur of antiquity or that they were once the exclusive order of the day. Indeed, the viability of any government in a civilized society depends on quite different propositions. As stated by this Court in *Munn* v. *Illinois*, 94 U.S. 113 at 134 (1871):

> " 'A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances.'
>
> • • • • •
>
> "We know that this is a power which may be abused, but that is no argument against its existence. For protection against abuses by Legislatures the people must resort to the polls, not to the courts."

In the present case, the rule of law which was changed involved a redefinition of the legal injury resulting from automobile accidents. Justification for this change may be summarized by the following conditions found to have existed by the court below under the old system: 1) court congestion; 2) high cost of automobile insurance; 3) delay in the administration of justice; 4) inequitable results leading to both under-compensation and over-compensation of claims; 5) specious and exaggerated claims, as found by the Massachusetts Supreme Judicial Court in upholding its no-fault law in *Pinnick* v. *Cleary*, 360 Mass. 1, 271 N.E. 2d 592 (1971).

The revisions undertaken by the Connecticut Act constitute no major upheaval in the law of torts. In the last century, new concepts of tort liability have arisen. The principle of fault has been gradually replaced in many areas by that of "social misconduct." *See* Wright and Fitzgerald, *Connecticut Law of Torts* (2d ed. 1968) § 1 at p. 1. Connecticut courts have on many occasions applied the " 'ancient common law principle, that where one of two innocent persons must suffer loss from an act done, it is just that it should fall on the one who caused the loss rather than upon the other who had no agency in producing it and could not by any means have avoided it.' " *Verilli* v. *Damilowski*, 140 Conn. 358, 360 (1953). The effect of this rule has been to eliminate as triable issues a number of defenses relating to fault. Examples of the application of no-fault at least on a limited basis in civil law include: the non-natural use of land, ultrahazardous activities, vicarious liability, (including the family car doctrine), absolute nuisance, monopolies and combination in restraint of trade, implied warranty under the Uniform Commercial Code and misrepresentation. In no area, perhaps, has the principle of no-fault liability had greater application than in the case of motor vehicles operating upon the public highways. The unexcused violation of a statute may be negligence per se, even though reasonable prudence was employed.

> "[T]he violation of a statute designed for the protection of the public is in itself negligence irrespective of whether

the conduct which constitutes the violation is that of a reasonably prudent person."

Jacobs v. *Swift & Co.*, 141 Conn. 276, 279 (1954).

Such statutes, which cover everything from speed to directions by police officers need not be detailed here.[3] In all these areas, however, negligence as a triable issue has either been reduced or eliminated.[4] It has been but a moderate transition to develop the concept of no-fault further. The object now is to provide ready compensation on an equitable, uniform and efficient basis for relatively minor claims under the Act.

The justification offered for the Act is not altogether unlike that provided for workmen's compensation legislation. In upholding the latter, this Court observed in *New York Central R. R. Co.* v. *White*, 243 U.S. 188 (1916):

"In support of the legislation, it is said that the whole common-law doctrine of employer's liability for negligence, with its defenses of contributory negligence, fellow-servant's negligence, and assumption of risk, is based upon fictions, and is inapplicable to modern conditions of employment; that in the highly organized and hazardous industries of the present day the causes of accident are often so obscure and complex that in a material proportion of cases it is impossible by any method correctly to ascertain the facts necessary to form an accurate judgment, and in a still larger proportion the expense and delay required for such ascertainment amount in effect to a defeat of justice; that under the present system the injured workman is left to bear the greater part of industrial

[3]*See generally*, Wright and Fitzgerald, *supra*, Ch. XIII.

[4]Indeed, the common law definition of negligence itself is not without it variations, including forseeability as a test of causation and the issue of comparative negligence. *See*, e.g., Wright and Fitzgerald, *supra*, §§ 33, 40.

accident loss, which because of his limited income he is unable to sustain, so that he and those dependent upon him are overcome by poverty and frequently become a burden upon public or private charity; and that litigation is unduly costly and tedious, encouraging corrupt practices and arousing antagonisms between employers and employees."

243 U.S. at 197.

To the contention that the statute unconstitutionally departed from common law rules of conduct, Mr. Justice Pitney replied:

"The common law bases the employer's liability for injuries to the employee upon the ground of negligence; but negligence is merely the disregard of some duty imposed by law; and the nature and extent of the duty may be modified by legislation, with corresponding change in the test of negligence. Indeed, liability may be imposed for the consequences of a failure to comply with a statutory duty, irrespective of negligence in the ordinary sense; safety appliance acts being a familiar instance. *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Taylor*, 210 U.S. 281, 295; *Texas & Pacific Ry. Co.* v. *Rigsby*, 241 U.S. 33, 39, 43."

243 U.S. at 198.

Common law standards of assumption of the risk and the fellow servant rule were not to be enshrined as unalterable.

"Plainly, these rules, as guides of conduct and tests of liability, are subject to change in the exercise of the sovereign authority of the State."

243 U.S. at 200.

The Court recognized that a state could not abolish all rights of action without replacing them with something adequate. A reasonably just substitute had to be provided. The Court held that the workmen's compensation system constituted such a substitute.

> "The statute under consideration sets aside one body of rules only to establish another system in its place. If the employee is no longer able to recover as much as before in case of being injured through the employer's negligence, he is entitled to moderate compensation in all cases of injury, and has a certain and speedy remedy without the difficulty and expense of establishing negligence or proving the amount of the damages."
>
> 243 U.S. at 201.

> "We have said enough to demonstrate that, in such an adjustment, the particular rules of the common law affecting the subject-matter are not placed by the Fourteenth Amendment beyond the reach of the law making power of the State; . . ."
>
> 243 U.S. at 202.

In reviewing the plan of compensation and the manner of providing security, the Court found the act neither arbitrary nor unreasonable from the standjoint of natural justice. As to the familiar arguments against no-fault liability, the Court stated:

> "Much emphasis is laid upon the criticism that the act creates liability without fault. This is sufficiently answered by what has been said, but we may add that liability without fault is not a novelty in the law. The common-law liability of the carrier, of the inn-keeper, of him who employed fire or other dangerous agency or harbored a mischievous animal, was not dependent altogether upon questions of fault or negligence. Statutes imposing liability without fault have been sustained. *St. Louis & San Francisco Ry. Co.* v. *Mathews*, 165 U.S. 1, 22; *Chicago, Rock Island and Pacific Ry. Co.* v. *Zernecke*, 183 U.S. 582, 586."
>
> 243 U.S. at 204.

In the present case there are comparable justifications for the Connecticut act. Modern communications and the organization of present day society and commerce have made the private automobile a virtual necessity for broad sectors of the public. The performance capabilities of today's motor vehicles and the system of high speed, limited access expressways and other transportation networks have brought with them their inevitable hazards, cutting across all levels of our population. Public confidence in the administration of justice and one's own sense of equity demand that the resulting personal injuries and damages be compensated effectively and fairly. It is well within the permissible limits of state action to redefine the legal rights involved. A reasonable and just substitute can be provided, affording a ready and efficient system of redress. The Legislature in effectuating such a right was entitled to proceed by more compassionate and clear-cut standards than "who reached the intersection first." The arguments of the appellants do not merit any hearing on the merits by this Court, for they are really addressed to legislative, not judicial considerations. As Mr. Justice Holmes observed in his now vindicated dissent in *Lochner* v. *New York*, 198 U.S. 45 (1905),

> "If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may

regulate life in many ways which we as legislators might think as injudicious or if you like as tyrannical as this, and which equally with this interfere with the liberty to contract. . . . The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics."

198 U.S. at 75-76.

B. NO EQUAL PROTECTION VIOLATION.

Appellants next contend that various delineations made in the Act as to which parties retain the negligence cause of action are tantamount to "gross inequality." (Jurisdictional Statement, p. 14). As noted by the Connecticut Supreme Court, however, this question has been resolved in favor of constitutionality in the majority of cases. The general principles are as follows:

" '[T]he Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways, Barbier v. Connolly, 113 U.S. 27 [5 S.Ct. 357, 28 L.Ed. 923] (1885); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 [31 S.Ct. 337, 55 L.Ed. 369] (1911); Railway Express Agency v. New York, 336 U.S. 106 [69 S.Ct. 463, 93 L.Ed. 533] (1949); McDonald v. Board of Election Commissioners, 394 U.S. 802 [89 S.Ct. 1404, 22 L.Ed. 2d 739] (1969) . . . .' "

Reed v. *Reed*, 404 U.S. 71 at 75 (1971).

" '[W]hen it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.' . . ."

Louisville Gas & Electric Co. v. *Coleman*, 277 U.S. 32, 41 (1928).

"The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal . . . . With this much discretion, a legislature traditionally has been allowed to take reform 'one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind,' Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 489 (1955); and a legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked. See Ozan Lumber Co. v. Union County National Bank, 207 U.S. 251 (1907)."

McDonald v. *Board of Election Commissioners*, 394 U.S. 802, 808-809 (1969).

" 'The problems of government are practical ones and may justify, if they do not require, rough accommodations, — illogical, it may be, and unscientific.' "

Metropolis Theatre Co. v. *Chicago*, 228 U.S. 61, 69-70 (1913).

In this case actuarial studies directed by the legislature and cited by the court below justified the threshhold level of $400 for retaining the negligence cause of action. As observed by the Connecticut court:

"The prior unrestricted system of remedy for accident victims has developed into a forensic Medusa. Those approaching it often stood rock hard facing the inevitable delays and uncertainties inherent in contested trials. The concept of general damages has been lost sight of and, in its place, there has emerged a system of frequent over-

compensation for victims with minor injuries, which, in effect, represents the price paid by liability insurers to forgo the long, expensive process of litigation. An unfortunate concomitant of this has been the undercompensation of cases of a truly serious nature. If anything, the act tends to be an equalizer, providing the more seriously injured the opportunity to seek true redress. Certainly, those injured who hover on either side of the $400 threshold may suggest imperfections in this system, in that one who incurs $399.99 in allowable expense fails to satisfy that criterion for exemption, while another incurring $400.01 in expenses is exempted. Yet in every instance where a line must be drawn or a cutoff established there are those who fall directly on either side. This is but one of the vagaries of life to which we accustom ourselves and which we accept in our daily affairs, but we cannot, for this reason, find the act unreasonable in its purpose and overall effect. We rely, instead, on the thought that no matter to which side of the line a party is placed his remedies are sufficient and reasonable."

Jurisdictional Statement, pp. 29A-30A.

C. JURY TRIAL

Appellants' claims as to jury trial are based exclusively upon state constitutional, not federal grounds. See Jurisdictional Statement, p. 14. As this Court stated in another Workmen's Compensation decision:

> "The Seventh Amendment, with its provision for preserving the right of trial by jury, is invoked. It is conceded that this has no reference to proceedings in the state courts (Minneapolis & St. Louis R. R. Co. v. Bombolis, 241 U.S. 211, 217), but it is urged that the question is material for the reason that if the act be constitutional it must be followed in the federal courts in cases that are

> within its provisions. So far as private rights of action are preserved, this is no doubt true; but with respect to those we find nothing in the act that excludes a trial by jury. As between employee and employer, the act abolishes all right of recovery in ordinary cases, and therefore leaves nothing to be tried by jury."

Mountain Timber Co. v. *Washington*, 243 U.S. 219 at 235 (1916).

D. MANDATORY SECURITY

The no-fault system, as noted by the Court below, is a just and reasonable alternative because uniform and appropriate compensation is ensured. Security as an incident of automobile ownership is necessary for this end. There is nothing shocking or novel in such a requirement. Comparable provisions were sustained in the Workmen's Compensation decisions.

> "All reasonable presumptions are in favor of its [the legislation's] validity, and the burden of proof and argument is upon those who seek to overthrow it. . . .
>
> "We are clearly of the opinion that a State, in the exercise of its power to pass such legislation as reasonably is deemed to be necessary to promote the health, safety, and general welfare of its people, may regulate the carrying on of industrial occupations that frequently and inevitably produce personal injuries and disability with consequent loss of earning power among the men and women employed, and, occasionally, loss of life of those who have wives and children or other relations dependent upon them for support, *and may require that these human losses shall be charged against the industry, either directly, as is done in the case of the act sustained in New York Central R.R. Co.* v. *White, supra, or by publicly administering the compensation and distributing the cost*

among the industries affected by means of a reasonable system of occupation taxes. . . ." (Emphasis added.)

Mountain Timber Co. v. *Washington, supra,* at 237-238, 243-244.

"In excluding the question of fault as a cause of injury, the act in effect disregards the proximate cause and looks to one more remote — the primary cause, as it may be deemed — and that is, the employment itself. For this, both parties are responsible, since they voluntarily engage in it as co-adventurers, with personal injury to the employee as a probable and foreseen result . . . .And it is evident that the consequences of a disabling or fatal injury are precisely the same to the parties affected, and to the community, whether the proximate cause be culpable or innocent. Viewing the entire matter, it cannot be pronounced arbitrary and unreasonable for the State to impose upon the employer the absolute duty of making a moderate and definite compensation in money to every disabled employee, or in case of his death to those who were entitled to look to him for support, in lieu of the common-law liability confined to cases of negligence."

New York Central R.R. Co. v. *White, supra,* at 205.

In the present case, the Act recognizes that since the motoring public derives the benefit of automobile travel, it should bear the incidental expense of providing security. The requirement of spreading the risk over the vast portion of the public may involve some secondary expense. Requiring one to act within reason for his own good when the public interest is affected, however, is nothing revolutionary or capricious.

"'The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the State must suffer.' Holden v.

Hardy, 169 U.S. 366, 397. It cannot be doubted that the State may prohibit and punish self-maiming and attempts at suicide; it may prohibit a man from bartering away his life or his personal security; indeed, the right to these is often declared, in bills of rights, to be 'natural and inalienable'; and the authority to prohibit contracts made in derogation of a lawfully established policy of the State respecting compensation for accidental death or disabling personal injury is equally clear. Chicago, Burlington & Quincy R.R. Co. v. McGuire, 219 U.S. 549, 571; Second Employers' Liability Cases, 223 U.S. 1, 52 . . . .

"We conclude that the prescribed scheme of compulsory compensation is not repugnant to the provisions of the Fourteenth Amendment, and are brought to consider, next, the manner in which the employer is required to secure payment of the compensation. By § 50, this may be done in one of three ways: (a) state insurance, (b) insurance with an authorized insurance corporation or association, or (c) by a deposit of securities. The record shows that the predecessor of plaintiff in error chose the third method, and, with the sanction of the commission, deposited securities to the amount of $300,000, under § 50, and $30,000 in cash as a deposit to secure prompt and convenient payment, under § 25, with an agreement to make a further deposit if required. This was accompanied with a reservation of all contentions as to the invalidity of the act, and had not the effect of preventing plaintiff in error from raising the questions we have discussed.

"The system of compulsory compensation having been found to be within the power of the State, it is within the limits of permissible regulation, in aid of the system, to require the employer to furnish satisfactory proof of his financial ability to pay the compensation, and to deposit a reasonable amount of securities for that purpose. The third

clause of § 50 has not been, and presumably will not be construed so as to give an unbridled discretion to the commission; nor is it to be presumed that solvent employers will be prevented from becoming self-insurers on reasonable terms . . . .

"This being so, it is obvious that this case presents no question as to whether the State might, consistently with the Fourteenth Amendment, compel employers to effect insurance according to either of the plans mentioned in the first and second clauses. There is no such compulsion, since self-insurance under the third clause presumably is open to all employers on reasonable terms that it is within the power of the State to impose. Regarded as optional arrangements, for acceptance or rejection by employers unwilling to comply with that clause, the plans of insurance are unexceptionable from the constitutional standpoint . . . ."

243 U.S. 206-209.

E. FIFTH AMENDMENT CONSIDERATIONS.

The Court below held that the required reports by the vehicle owner showing a failure to obtain security could not be used as a basis for criminal prosecution for that violation. This interpretation of the act must be deemed authoritative and conclusive. Appellants' contentions merit no further discussion.

CONCLUSION

The Act is a reasonable exercise of the police power of the State of Connecticut. Its basic concepts have been upheld repeatedly in prior decisions of this Court involving comparable legislation. For these reasons, as well as those stated in the brief of the other appellees which we also adopt, it is respectfully submitted that the appeal be dismissed, or, in the alternative, that the judgment be affirmed, pursuant to Rule 16 of the Revised Rules of the Supreme Court.

Respectfully submitted,

CARL R. AJELLO
Attorney General

By: BARNEY LAPP
Assistant Attorney General

DANIEL R. SCHAEFER
Assistant Attorney General

Attorneys for Appellees,
Defendant State Officials

30 Trinity Street
Hartford, Connecticut 06115

CERTIFICATE OF SERVICE

I, Barney Lapp, attorney for the appellees, Defendant State Officials, certify that on the 28th day of November, 1975, I served a copy of the foregoing Motion To Dismiss Or Affirm, via first class U.S. Mail, postage prepaid, to the following: Harold J. Geragosian, Esq., 380 West Main Street, New Britain, Connecticut 06052 and Ralph G. Elliot, Esq., One American Row, Hartford, Connecticut 06103.

BARNEY LAPP
Assistant Attorney General
30 Trinity Street
Hartford, Connecticut 06115